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MOSAICARUM ET ROMANARUM LEGUM COLLATIO.

M. HYAMSON.

MOSAICARUM ET ROMANARUM LEGUM COLLATIO.

WITH

INTRODUCTION, FACSIMILE AND TRANSCRIPTION OF THE BERLIN CODEX, TRANSLATION, NOTES AND APPENDICES.

BY

REV. M. HYAMSON, LL.D., B.A.

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TO

MY WIFE.

PREFACE.

ROMAN Jurisprudence engages the attention of continental jurists to a greater extent than it does that of English lawyers, being of more practical interest to the former than to the latter. The Law of England, though it owes much indirectly to that of Rome, is not based on it as are the Laws of France and Germany. Still the ancient system is deserving of more study than it receives, if only as a magnificently developed system of thought, the product of a long succession of great minds.

For its proper understanding, however, one should begin at the beginning, with the remains of the Ante-Justinian juristic literature.

I commenced with the *Mosaicarum et Romanarum Legum Collatio*, because the title held out the prospect of an interesting comparison between two great systems. Closer inspection showed that this promise was illusory. Yet the problems of Age, Place, Authorship and Purpose, which occupied the minds of scholars from the sixteenth century onwards, deserve the attention of our own times. On these points I have not been content to repeat statements at second-hand. Wherever possible I have verified references, traced quotations to their sources, and carefully weighed the views of critics.

The facsimile of the Berlin MS. of the Collatio, the oldest and best of the three Codices, which is printed with a transcript, has enabled me to correct errors and supply deficiencies in Mommsen's Apparatus of Variants.

These I have arranged in columns, in order to help the reader to take in at a glance the salient features of each Codex and the marks by which it is distinguished from its fellows.

I have followed the latest text (Mommsen's) generally but not exclusively. The purpose I have kept in view in the Notes has been to furnish references to the parallels in Roman Jurisprudence, elucidations of difficulties and occasionally brief statements of Rabbinical views where these would be helpful in the interpretation of the text or the subject matter.

I trust that this effort will find appreciation and stimulate others to cultivate a field of enquiry that is full of interest, and the study of which will bring us into touch with the intellectual giants of the past.

In conclusion I take the opportunity of expressing my thanks to Krüger, the surviving editor, and to the firm of Weidmann, the publishers, for their courteous permission to make the fullest use of the Berlin edition (1890), of the Ante-Justinian Jurisprudence.

It is also a pleasure to me to acknowledge the care and attention which the Publishers and Printers and the Foreman of the Compositors' room have bestowed on the execution of what typographically must have been a difficult piece of work.

M. H.

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ESSAYS ON THE COLLATIO.

THE MANUSCRIPTS OF THE COLLATIO.

THE Collatio Legum Mosaicarum et Romanarum is not mentioned in the classical Literature of Roman Jurisprudence. The first references to it are made by Hincmar, Archbishop of Rheims, who died in 882. His works[1] are rich in excerpts from Roman Law, most of them taken from Alaric's Breviary, and Julian's Epitome of the Novels. What is unique in Hincmar is that he also quotes the Collatio. In his treatise *de diuortio Lotharii et Tetbergae*, written about 860, he deals with the divorce of Lothar II., King of Lorraine, and Tetberga. The references to the Collatio are as follows: (Opp. T. 1, p. 627) "*Scriptum est in libro Leuitici; qui dormierit cum masculo coitu femineo, uterque operatus est nefas, morte moriantur; unde et leges Romanae decernunt in capitulis de stupratoribus, quod legens quisque inueniet.*" The statement concerning the Chapters *de stupratoribus* in the *Leges Romanae* refers to Title V., styled *de stupratoribus* in the *Collatio*. The concluding phrase, *quod legens quisque inueniet* shows that the *Collatio* must have been generally known to scholars. The second citation (*ibid*, p. 634), is more explicit. Hincmar complains that the Queen's brother had not been examined. He should have been summoned before the Court, and either the two parties who were accused of incest should both have been acquitted or both punished. *Veniat ille qui in sua libertate est, et legaliter aut quod ei impingitur defendens liberetur aut illis de quibus reputatur, quoniam non solum particeps, sed etiam auctor et executor criminis est, concredens legaliter puniatur, et aut in liberatione illius ista quae in custodia est et propter timorem super se mendacium dicit, legaliter liberetur aut in punitione illius legaliter puniatur, sicut in primo libro legis Romanae capitulo sexto de stupratoribus et in capitulo septimo de incestis et turpibus nuptiis praecipitur et in ceteris quae Christiana iura depromunt, iusti iudices legere possunt.* It will be noticed that Hincmar quotes *de stupratoribus* as Chapter VI., and *de incestis et turpibus nuptiis* as Chapter VII.

[1] Hincmari Opp. ed. Sirmond. T. 1 and 2. Paris, 1645. Folio.

This is either a slip, or we may assume that Hincmar took Title I. *b* as a separate title; for in the extant manuscripts of the Collatio, *de stupratoribus* is Title V., and *de incestis nuptiis* is Title VI.[1] As these topics are not treated successively in this order in any other source, the *Lex Romana*, of which Hincmar speaks, undoubtedly designates a Codex of which the *Collatio* formed part; and since he speaks of these chapters as being in *primo libro legis Romanae*, the *Collatio*, it has been suggested, stood first in the Codex which he quotes.[2]

Jean Dutillet (Joannes Tilius Meldensis), Bishop of St. Brieuc, afterwards of Meaux (died 1570), visited, about 1544, the libraries of the North French Monasteries and found fragments of the Collatio which he attributed to Licinius Rufinus.[3]

He did not publish them for the same reason that he did not publish Ulpian till 1549, because the copies which came into his possession before that year, and some of which he saw at the same time as the Collatio, were imperfect.[4] Dutillet's Fragments of the Collatio are now lost.

Three manuscript codices containing the Collatio are still extant. They are known as the Berlin, Vienna and Vercelli Codices. The Berlin Codex[5] is assumed by all critics to be identical with the MS. found by Pierre Pithou,[6] the first editor,

[1] Mommsen suggests that Hincmar's manuscript, like the Berlin Codex, had, before the title, *de stupratoribus*, the phrase: *expl. titulo quinto.*

[2] Savigny's view (see his *Geschichte des Roemischen Rechts im Mittelalter*, Bk. ii., pp. 280-283) is, that in Hincmar's *Lex Romana*, the Collatio stood first, followed possibly by Julian's Epitome, Alaric's Breviary and the Theodosian Code. His ground for assuming that Hincmar's Codex must have contained the Theodosian Code, separated from the Collatio by two books, is that Hincmar quotes the Fourth Book of the Theodosian Code as the Sixth: Opp. Tom. II., p. 501 *et item in libro sexto, titulo decimo nono, inter alia praecipitur: ut sententia, si sine scripto dicta fuerit, nec nomen sententiae habere mereatur.* This, apparently, is from the Theodosian Code, lib. iv., tit. 17. const. 1. Haenel has, however, shown (on the passage in his edition, pp. 414, 415), that Hincmar took it from Justinian's Code, (vii. 44, 3), and wrote Lib. vii., tit. xliiii The "*L*" was turned by a scribe into "*V.*" Mommsen (p. 112 of his edition, *Ante-Iustiniani Iuris*, etc.), thinks that Hincmar's Codex contained the Collatio after Julian's Epitome, and that the words *primus liber* were at the beginning of the Collatio, as in the Vienna Codex: *Incipit liber primus.*

[3] Pithou's first note (p. 66, ed. princeps; p. 109 in Heidelberg edition, Brit. Mus. 877 e. 4): *Inaudieram equidem antea fuisse ex priscis scriptoribus aliquem qui cum Moysis legibus Romanas contulisset; ac memini Jo. Tilium antiquae eruditionis hominem, cum de ueterum iurisconsultorum reliquiis sermo esset, narrare solitum habuisse aliquando se eius operis fragmenta pauca quibus ille Licinnii Rufini nomen tribuebat.*

[4] Cp. Hugo's Gelehrtengeschichte, 3rd edition, pp. 229, 230; and his Index Editionum Fontium, etc., pp. 135, 136.

[5] Berlin Royal Library, No. 269.

[6] Haenel, in the preface to his edition of Julian's Epitome (pp. iv. and v.), doubts whether this was the only MS. used by Pithou for his edition of the Collatio.

who states that he took the MS. in 1570 from an ancient library of the Sequani, or rather Mandubii, in which it had been concealed for more than 80 years. (Probably he meant 800 years).[1]

From this MS. he edited the whole work in 1572.[2] Before doing so, he communicated his discovery to his fellow-workers and friends, Charondas, Contius, Cujas, Scaliger, by each of whom it was utilised.

Ludovicus Charondas published at Antwerp, in 1575, an edition of the Digest. In a preface, dated Paris, 1st January, 1572, he quotes from the *Collatio Romanorum cum Moysis Legibus* which, he says, he found in a *Codex Bibliothecae Dionysianae, i.e.*, in the library of the Abbey of St. Denys. The text of the quotation, Title I., chap. 11, is identical with that in Pithou's MS., as the *Varia Lectio*, given in the margin clearly shows.[3]

Antonius Contius' edition of his *Lectiones Subseciuae*, published 1573,[4] has, on page 74, as Chapter ix., an excerpt—*frag-*

[1] Pithou's Edition of the Collatio, prefatory note on i. 1, *Illud affirmare liquet quae nunc damus ex antiquissima Sequanorum aut Mandubiorum potius bibliotheca in qua per annos octoginta* (in the Heidelberg edition *octingentos) et amplius latuerunt.*

[2] The Dedication is dated Lutetiae Parisiorum Kalend. Octobr., 1572.

[3] The passage in the Preface of Charondas' Digest is as follows: *Unum referam locum ex libro qui Licinii Rufini esse creditur, de collatione legum Romanarū cum Moysis legibus, quem habeo manuscriptum ex bibliotheca Dionysiana: illius fragmentum unum legitur in cap.* 4 *D. ad legem Corneliam de sicariis et alterum in cap.* 5 *in fine D. de poenis. Ideo uero locum illum referre statui, quia multū pertinet ad explicandam aequitatis rationem, et quam delictis puniendis moderationē adhibere oporteat, ostendit, in quo praecipua uis legis consistit; ut eleganter in illius definitione Papinianus exprimit. Sic igitur in eo libro legitur. Ulpianus libro et titulo quo supra. Cum quidam per lasciuiam . . . . Vellem* (in margin, *Deest aliquid in libro manuscripto Rufini, nempe, rescribas, uel aliud simile . . . . . nec cupiditatis culpam* (in margin, *Fortè legēdum cupiditatem culpae*) *et sane in omnibus criminibus distinctio hęc poenarum aut iustitiam* (in the margin, *ex hoc loco emendanda est l.* 5 *in fin. D. de poenis, et pro poenam iustam, legēdum, poenarum iustitiam*). Charondas also quotes a correction from Pithou's *Collatio*. In his edition of Justinian's Code. IV., 34, 1, 10, on *Iidem AA. et* CC. *Septimiae*, he has, in margin, Note K, *Septimiae. In fragmentis Pithoei*, idem A. & CC. vii. *et quadrat: emendat Pithoeus recte Septimio et Quadrato, nā in quib, uet. exẽp. hic legitur, Septimo.* Also in Justinian's Code, vi, 65, 1, on the Inscription *Imp. Antoninus A. Agrippino*, he has in margin: *In fragmentis Pithoei Julio Agrippino*, and at the end of this Constitution, he has in the margin Prop. iiii., *Non. nou. Antonino III. Cons. Hanc subscriptionem reperi in fragmentis Pithoei tit.* x, *ex quodam Pauli responso, qui hanc constitutionem declarare respondit his qui horrea locant maiorẽ uim imputari non posse.*

The date of Charondas' edition of the *Corpus Juris Ciuilis* is 1575. There are no further references to the Collatio.

[4] *Antonii Contii iurisconsulti lectionum subseciuarum iuris ciuilis liber primus ab auctore denuo recognitus atque auctus Aurelianis ex officina Eligii Gibierii.* 1573. (Mommsen's edition of the *Collatio in the Collectio Librorum iuris ante-Justinianae*, Tom. iii., p. 110. note 2.) Blume's *Prolegomena* to the *Lex Dei*, xvi., note 5, also quotes the passage from *A. Contii subseciuarum lectionum*, Lib. I., c. 9 (inter opera Contii, Paris, a. 1616 edita, pp. 35, 36). *Mox idem edictum, longe integrius cum*

mentum ex integro Pauli libro singulari sub titulo quemadmodum iniuriarum agendum sit—which, the author says, was communicated by friends, and never before printed. The readings are those peculiar to Pithou's Codex, *e.g. aget* instead of *agit* (II.6.1.); *mola* instead of *mala* (II.6.4.); Numedius Nigidius instead of Numerius Negidius (II.6.5.).[1] This chapter is not found in the first edition of the *Lectiones Subseciuae* published at Leyden, 1555. Still, the whole of the MS. was probably not examined by him, as the fragments of the XII. Tables, published by him in 1572, omit the passages in the Collatio, tit. xvi., chap. 4.

Cujas had the MS. in his hands.[2] A printed copy of the Collatio in the Public Library at Berne contains his annotations, obviously founded on Pithou's MS., as some of his additions to, or variations from, Pithou's edition are identical with those found in that Codex.[3]

Pauli continua et sincera interpretatione subiiciam, ex fragmento nobis ab amicus communicato, nec unquam antea typis edito . . . . fragmentum ex integro Pauli libro singulari sub titulo: Quemadmodum iniuriarum agendum sit. The fragment is identical with Title II., c. 6 of the Collatio. As the first edition published at Leyden in 1555 has not this passage (Mommsen, p. 110, note 2), Blume is probably wrong when he says (*Prolegomena* p. xvi.), *Id uerum mihi persuasum ab hoc Tiliano codice etiam eum locum manasse quem Ant. Contius publicauit, quem ex integro Pauli libro desumtum esse putabat.*

[1] Mommsen's edition of the *Collatio* as above cited, p. 110, note 2.

[2] Cujas' Letters to Pithou, Codex Paris, Dupuy, 700. Excerpts made by Savigny are quoted by Blume in the Preface to his edition, p. vi. P. F. Girard, at Mommsen's request, re-examined these Letters. Cujas first mentions the Collatio in a letter dated 17th October, 1570, in which he writes to Pithou asking for a loan of the manuscript, and speaks of it as a new discovery: "*Apportés nous le Licinius et le XVI. Cod. Theod.*" In the same year, apparently, when he received an Apograph of the Collatio, "*il auroit besoin d'une autre copie. qui se pourra encore trouver à mon avis. J'ai des gens en trois lieux. qui cherchent. En ce lieu des XII. tables, qui parle de agnatis et gentilibus, je lye. Si agnatus nec escit, gentilis familiam habeto. Haec nunc gentilitia jura in usu non sunt. J'en ai corrigé plusieurs autres et en corrigerois bien d'avantage, si j'avois l'original comme je desire bien fort le tenir quelques jours. Et l'aiant tenu et reveu, vous pourrés puis après le publier ainsi que vous devisés par votre lettre.*

Ce qui est avec le Rufinus est très bon, et la collection de tutoribus me plait fort, etc.

1570. 15 Novemb. *Verba consultationis et rescripti ita se habent. Inter..... majoribus, etc. Je trouve bon ce lieu—c'est un ancien jeu.*

1571. 20 Januar. "*Je desire bien fort de voir l'original de votre tant bon Rufinus.*"

1573. 11 April. "*Je n'ay encore reçu votre legem Dei que vous avez fait imprimer.*"

Blume's *Prolegomena*, pp. vi. and vii. Bonn, 1833.

[3] Blume, *Prolegomena* to the *Lex Dei*, as cited above, p. xix., *e.g. usque ad quartum*, title vi. chap. 2. §. 2; *non possumus* (instead of *possumus*), title vi. chap. 3, §. 1; *ex lege*, title xvi. chap. 2, § 12.

Scaliger's Apograph.

In the Public Library of the Leyden University, there is a manuscript numbered 61, and inscribed *ex legato illustris uiri Josephi Scaligeri.*[1]

Folios 105–123*a*. contain the Collatio; this Apograph, Blume tells us,[2] was first used by Dorville, then by Florentius Petrus Pittenius, Matthias Roever, Hermann Cannegieter, Haenel and Puggaeus. Dorville annotated a copy of Pierre Pithou's first edition of the Collatio, and, where Scaliger's Apograph differs from Pithou's text, inserted the variants from the Apograph on the margin of Pithou's edition. He apparently also added some conjectures of his own. This annotated copy is now, together with the rest of Dorville's books, in the Bodleian Library at Oxford.[3]

Schulting, in his edition of the Ante-Justinian Jurisprudence, used Pittenius' comparison of the printed edition with Scaliger's Apograph,[4] and gives various readings from it.[5]

Roever and Cannegieter have quoted passages from the Apograph; the former in a critical study of some corrupt portions of the Civil Law,[6] the latter in his commentary on the Collatio.

Haenel and Puggaeus examined the Apograph and sent their notes to Blume.[7] It is not quite certain whether Scaliger copied

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[1] Cod. Lugdun.; Scal. No. 61. *Cp.* Catalog. Lugduno—Batavae, ed. 1716, p. 342.

[2] Blume's *Proleg. to Lex Dei*, xxiii., note 1.

[3] Blume gives the number in the Bodleian Catalogue as x., 2. 2, 13. The present reference is "*Fragmenta quaedam Papiniani aliorumque ueterum iuris auctorum* (Paris, 1573), with manuscript notes and collations. D'Orville, 334.".

[4] Scaliger in the Preface to his *Jurisprudentia uetus ante-Iustinianea, editio noua*, 1737, *Lipsiae. Paululum etiam profuere mihi lectionum uarietates ex apographo uiri Maximi, Josephi Scaligeri, quod in publica Academiae huius bibliotheca asseruatur, quodque cum Leidensi exemplari accurate contulit quondam, dum hic studiorum causa ageret, Florentius Petrus Pittenius, etc.* Vonck also used Pittenius' comparison, as well as the Apograph itself. See his *Specimen crit. in uarios auctores*, 1744, p. 37 *seq.*, in the chapter headed *Conjectanea in Collat. Leg. Mosaic.*

[5] Schulting's edition of the *Iurisprudentia ante-Iustiniana*, pp. 940 and 941, headed: *Variae Lectiones in Mosaicarum et Romanorum Legum Collatione, Praecipue ex codice manuscripto Josephi Scaligeri, quem denotant haec litterae C. S. nonnullae ex Parisiensi editione.*

[6] Roeveri, Matthiae, *Specimen iuridicum inaugurale ad loca quaedam iuris ciuilis deprauata*, Lugd. Bat., 1739, and also in Oelrich's *Thesaurus* I., I. pp. 137-192. In chap. xii., p. 179, where he discusses the *Edictum Diocletiani et Maximiani de Manichaeis*, he quotes the apograph. "*Porro sed Dii immortales prouidentia sua ordinare; apographo Josephi Scaligeri, extat: sed Dii immortales prudentia sua.* Chap. xiii. is headed *Mosaicarum et Romanarum L. L. Collatio plurimis in locis emendatur ex codice Josephi Scaligeri.*

[7] Blume's *Proleg. Lex Dei*, xxiv.

Pithou's or another manuscript. Zimmern[1] thinks that the original text was the Codex of the St. Denys' Library, referred to by Charondas. Blume is positive that Scaliger copied Pithou's manuscript. He relies first on the frequent correspondence of the notes in Cujas copy in the Berne Library with those in Scaliger's Apograph. A stronger argument is furnished by the text: almost everything which is absent from Pithou's edition and found in either the Vercelli or Vienna Manuscripts is also wanting in Scaliger's Apograph. Furthermore, in Pithou's edition, as in Scaliger's Apograph, Justinian's Novel 138 follows the Collatio and Julian's Novels precede it.

All this cumulative evidence points to Pithou's manuscript having been the original from which Scaliger made his Apograph. The difference between Zimmern and Blume may be reconciled if we assume with Mommsen[2] that Pithou's Codex, stated by him to have come *ex antiquissima Sequanorum aut Mandubiorum Bibliotheca*, is really identical with the one Charondas used, and which, he said, came from the *Bibliotheca Dionysiana*, i.e., from the monastery of St. Denys near Paris.

With 1576 all further mention of the manuscript ceases. It is not named in Boivin's catalogue of Pithou's Library;[3] nor is it to be found in the collections of Paris, Troyes and Montpelier where other portions of Pithou's library have gone.

In 1822, two manuscripts of the Collatio were re-discovered at Vienna and Vercelli, the former by Lancizolle, the latter by Blume.[5] Blume used them in his edition of 1833. At the auction of the Rosny Library, in 1837, many of Rosanbo's Manuscripts were sold, and amongst these was found the long lost Pithou Codex containing the Collatio. It was bought for the Royal Library at Berlin where it is now deposited.[6]

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[1] Zimmern, *Geschichte des röm. Privatrechts.* Tom. i., § 7, not. 23. Quoted by Blume, *l.c.* xvii.

[2] Mommsen's Edition of the Collatio in the Ante-Justin. Juris. Tom. III., p. 109.

[3] *Dissertation historique touchant la bibliothèque de P. Pithou*, at the end of the Life of Pithou by same writer, 1st edition, Paris, 1711. 2nd edition, with very few alterations, Paris. 1716. Finally, in epitome, in "Thou's History of His Own Times," edited by Buckley, London, 1733, Tom. vii., num. xi. p. 1-17. Also Grosley's *Vie de P. Pithou*, Tom. II., pp. 225 *seq.* (Blume, *Prolegomena* xxi., footnote 16). See also Haenel's Edition of Julian's Epitome, Preface, p. iv.

[4] Blume's *Prolegomena* xix.-xxi.

[5] *Ibidem*, xxviii.

[6] Haenel's Preface to his edition of Julian's Epitome, p. iv.

The Berlin Manuscript.[1]

The Manuscript is on parchment and consists of 202 large quarto folios, written by more than one hand. Each page contains at least 25, sometimes 30, and occasionally even 35 lines. On some of the pages the damp has rendered a portion of the first three lines wholly, or in part illegible. This is especially noticeable in the folios 157-169, which contain portions of the Collatio. The Codex was, from the first, a complete work, as is evident from the index of 731 chapters prefixed to it, and in accordance with which the paragraphs are continuously numbered. Folios 183 to 190 are not indexed as they are an interpolation.

The Berlin Codex contains:—

1. Folio 1*a* ... ... Six lines of theological matter.
2. Folio 1*b* till 17*a*, *line* 10. Index of Julian's Epitome of the Novels.
3. Folio 17*a*, *l.* 11 till 19*a*, *l.* 17 ... Index of the *Lex Dei*; the rest of Folio 19 is blank.
4. Folio 20*a* till 149*b* Julian's Epitome.
5. (*a*) Folio 149*b* Epitome of Novel 134, *de Vicariis* (Haenel's Edition of Julian, p. 192).
   (*b*) Folio 151 ... Novel 34, *ut nulli liceat mutuanti* (Haenel l.c. appendix, p. 160.*)
   (*c*) Folio 152*b* ... Summary of Novel 65, *de terris uel Domibus* (edited by Cujas, with commentary, *opp. ed. Neapol.*, vol. II., p. 1109. Pithou edited this novel in full, with the Collatio, in the edition of 1573 (p. 57).
   (*d*) Folio 153*a* ... Novel 114, *de sacris diuinis subscriptionibus.*
   (*e*) Folio 153*b* ... Novel 143 till 150, *de raptu mulierum et sponsatae.*
   (*f*) Folio 155*a* ... Novel 138, *de Usuris supra duplum non computandis*, (Haenel's Julian, p. 197). Pithou edited it from the Berlin Codex, with the Collatio, in the Edition of 1573, p. 55.

[1] Formerly *Acces. Lat.* 877, now *MS. Lat.*, fol. 269. Described by Haenel in the Preface to his edition of Julian's Epitome, iv-vi.; by Blume in *Zeitschrift für geschichtliche Rechtswissenschaft*, vol. x. (1842), p. 292 *seq.*; by Mommsen in the Preface to his edition of the Collatio, pp. 109 and 110.

Berlin Codex—(*cont.*)

(*g*) Folio 155*b* ...	Summary of Novel 121, *de partiariis solutionibus*. (Haenel's Julian, p. 197. Pithou's edition, 1573, p. 56.)
6. Folio 155*b*, and beginning of 156*a*, which contains only 7 lines ...	Commencement of *de consiliariis domini Juliani antecessoris dictatum* till *qua emerserit relatas* (Pithou, *l.c.*, p. 59; Haenel, *l.c.*, p. 198).
7. Folio 156*b* ...	Blank.
Folio 157*a* ...	Blank.
8. Folio 157*b* till Middle of 182*b*	The Collatio with the inscription Incip̄. Lex Dī, and consisting of chaps. 592-732.
9. Folio 183*a* till 190*b*	The conclusion of Justinian's Institutes (iv., 18, § 5 till end), and beginning of Digest till i. 7, *l.* 3.
10. Folio 191*a* ...	Conclusion of the *Lex Dei*.
11. Folio 191*a*, *l.* 15 till Folio 194*a*, *l.* 16	Conclusion of the *dictatum de consiliariis*, followed without a break by *Collatio domini Juliani de contutoribus* (Pithou, l.c. p. 63; Haenel, l.c. p. 201).
12. Folio 194*a*, *l.* 17- till 199*b* ...	Novel 134 (version as in the *Authent. ed.* Heimbach, p. 127).
13. Folio 199*b*, *l.* 20 ...	Novel 117, *De diuersis capitibus et solutione matrimonii*, preface and ch. 1 and 2; (version as given in *Authent. ed.* Heimbach, p. 112).
14. Folio 200*b*, *l.* 8— 202*a*, *l.* 21, which ends the Codex.	*Passio Sc̄i Gorgonii Martiris*, till the words *colligendi canes et lupi*.

There are various opinions as to the age of the Codex. Pithou ascribed the entire manuscript to the 8th century[1]; Blume[2] to the

[1] See Note next page.

[2] Blume, *Zeitsch. für Geschichtl. Rechtsw.* Vol. x., p. 302.

9th or 10th; Huschke to the 8th or 9th[1]; Mommsen to the earlier rather than the latter part of the 9th century.[2] The orthography, would incline one to place it at the end of the 9th or beginning of the 10th century.[3]

The Vienna Codex.[4]

The Vienna Manuscript No. 2160 was brought in 1822 from Salzburg to the Imperial Library of Austria, and accordingly was formerly styled the Salzburg Codex No. CCCLX. It was written by various hands, and belongs to the end of the 10th or beginning of the 11th century.[5] It consists of 184 folios, the Collatio being written on the folios 162*b*–183*b*. Each page has 31 lines. The beginnings of titles and chapters are written in red or other distinctive colour. There are few abbreviations. Almost the only ones that occur are the following:—

1. p = per.
2. ꝑ = pro.
3. p̄ = prae.
4. qd = quod.
5. ⁓ = m, n, ut.
6. ꝰ = us.
7. ⁓ = ur.
8. ⸢· = est.
9. ę = ae, e.
10. ! = punctuation mark.

The abbreviations marked 1, 2, 3, 7, 8, are also found in the Berlin Codex. In both codices, the letter I is unpointed. A frequent error is the use of accusative for the nominative or ablative. This is also a feature in the Berlin Codex. Pithou, in his edition, note 1, states that he altered 600 accusatives into other cases. *Vel* is frequently written for *ue*. The copyist follows the usual older spelling in words like *prouintia*.

The Vienna Codex contains:—

1. Epitome of the novels.
2. Justinian's novel 34,[6] now incomplete.

[1] Huschke, in the Preface to his edition of the Collatio, ***existimatur saec. octaui uel noui***. The former date would correspond with Pithou's statement about the ***MS. per annos octingentos et amplius, etc.....latuerunt***.

[2] Mommsen, Preface to his edition of the Collatio, p. 109.

[3] See Haenel in the Preface to his edition of Julian, p. iv. ***Ortographia singularis est concinnit autem in uniuersum cum ea quae reperitur in codicibus exeunto saeculo IX. et primis saeculi X. lustris in Curiensi Rhaetia aut in Italia superiori scriptis, quare ego codicem eiusdem aetatis atque patriae esse arbitror.***

[4] The Vienna MS. is described in Blume, ***Proleg. Lex Dei***, xxvii.-xxviii.; by Haenel, Julian's Epitome, vi. and vii.; and by Biener, ***Zeitsch. f. Gesch. R.W.***, vol. v., 1825, p. 238 ***seqq***.

[5] Mommsen in his Collatio, p. 111, gives the former century; Blume, ***Proleg. Lex Dei***, xxvii., has ***saeculo undecimo***; and so it is dated in the Catalogue of MSS. in the Imperial Library of Vienna.

[6] The penultimate leaf of Quaternion XVIII. is torn out; it contained the end of Novel 34, the beginning of Novel 114 and the whole of Novel 65. The index shows that the last was in the Codex.

3. Epitome of Novel 65, now wanting.
4. Novels 114, now incomplete, 143, 138.
5. Epitome of Novel 121.
6. *Dictatum de consiliariis.*[1]
7. *Collectio de tutoribus.*
8. Novel 134 (with the beginning *Quam iam uideor*). Preface and first two chapters of Novel 117.
9. A treatise of 15 pages on Julian's Epitome, not yet printed, beginning "*Primum et secundum capitulum non solum innouat anteriores leges sed etiam confirmat.*[2]
10. Justinian's Constitution, hitherto unknown, *pro debitoribus in Italia et Sicilia*, beginning *Cum semper decursio.*[3]
11. fr. 12 Digest, *de testibus* (xxii. 5).
12. A passage of uncertain origin *de cecis et debilibus.* It begins *Claudi et ceci et debiles pro furtiis causa cum ad iudicium steterunt* and ends *usque dum manifestare studeant huius rei notitiam.*[4]

Then follows the Collatio, *Incipit legem dei*, etc. Two chapters and a half are wanting at the end of Title XVI.

The Vercelli Codex.

This Manuscript, preserved in the library of the Chapter of Vercelli, and numbered CXXII., is a large quarto of 183 folios, written in double columns, each containing 29 lines. Julian's Novel 61 forms the exception, being written in single columns. There are no numbers or catchwords to the pages or quaternions. The original first quaternion is lost. The one at present in the Codex is by the same hand, but consists of foreign matter, and has 30 lines on each page. The upper margins of the last folios are damaged by damp. The rest of the Codex is almost intact. Blume, in his edition of the Collatio, gives specimens of the Manuscript, which seems to have been written by the same scribe at different periods. The Collatio from Title VI., Chapter 4, paragraph 1, *commissa sunt* is at the end of the Codex, and is preceded by the sentence *Ambrosius judex hunc legem scrisi in hoc libro.* This sentence, according to Blume, belongs to the

[1] See Biener, *Zeitschrift für geschicht. R.W.*, pp. 341-344.
[2] *Ibid.*, 345-352. [3] *Ibid.*, 352-355. [4] *Ibid.*, 355-357.

10th or the beginning of the 11th century,[1] and fixes the date of the Codex. Abbreviations and capital letters are rare.

In place of the first quaternion,[2] now perished, which contained an index of the rubrics to Julian, up to Chapter CCX., there are seven folios which begin:

Incip. nom. regionum.
et ciuitatem in quibus.
scorum apostolorum.
corpora requiescant.
Inc. Johannis Baptista filius.

A little later there follows:—

Incipit Expositio.
IIII *Euangl.*

Under this title are given matters relating to theology and jurisprudence. Then comes the proem to Justinian's Institutes.

The second quaternion,[3] beginning folio 8, contains an index of Julian's Novels, beginning Kp. CCXI. *De Abscentibus reis* till Kp. DXCII. (*sic*) *De Episcopis et monachis.* This is followed (folio 13b) by an index of the chapters of the *Lex Dei* beginning *Incipit Kapitula legis, quod praecepit Deus ad Moysen.* Then from folio 14b, Julian's Epitome begins, till Constitution CXXIV. ch. 564. The Epitome is introduced as follows: *Incipit constitutio prima nouellarum Justiniani p.p. aug. de Greco in Latino translatas. Per Julianum uirum eloquentissimum antecessorem ciuitate Constantinopolitana cons. prima.*

Then from folio 150b,–the Appendix to Julian (The Constitution *quam iam uideor*), up to Constitution CXXXIII. Chap. 596, viz.:

1. Justinian's Novel 34.
2. Epitome of Novel 65.
3. Novel 114.
4. „ 143.
5. „ 138.
6. Epitome of Novel 121.
7. Julian's *Dictatum de consiliariis* to the words *lege iterum Nouellas duas constitutiones circa centesima decima relatas.*

[1] Blume on the *Leg. Langobardorum*, p. xxi., *apud* Haenel's Julian's Epitome, p. viii., note 12. *Ambrosium iudicem ciuitatis Mediolanensis et aduocatum monasterii S. Ambrosii habemus anno* 892 *in Fumagalli codice diplomatico*, pp. 520, 522.

[2] Haenel's Edition of Julian's Epitome, p. 85.

[3] *l. c.*, p. 85.

8*a*. Lex IIII. DXCIII. Constitutio Metridiati. Pupillis uel adultis res suas nec uindi nec donari uel commutari licet nec cum fratro suo.	=	Cod. Just. V. 71, 4. Idem AA. Mithridati. Non solum per uenditionem rustica praedia uel suburbana pupilli uel adulescentes alienare prohibentur, sed neque transactionis ratione neque permutatione et multo magis donatione nec alio quoquo modo ea transferre e dominio suo possunt. igitur et tu si fratribus tuis per transactionem fundum dedisti *cet.*
b. DXCIIII. lex I. Imp. Antonino A. Muciano. Minor quod absque tutore uel curatore uindedit uel obligauit, dum ad legitimam etatem uenerit, restituitur illi.	=	Cod. Just. V. 71, 1. Imp. Antoninus A. Muciano. Venditio quidem praedii, quod iure pignoris . . . . distractum est, ad senatus consultum, quod de aliendandis praediis pupillorum ue adulescentium . . . . factum est, non pertinet. sed si etiam nunc in ea aetate es, cui subueniri solet, aditus competens iudex, an te in integrum restituere debeat . . . . dispiciet.
c. DXCV. De donatione. Donatio directa est, ubi in presenti res dona (*scr.* donata) traditur. quod si donator quartam sibi non reseruaberit,donatio non ualebit.	=	Cod. Theod. VIII. 12, 1, *ad summam Aegidianiam* (breuiar. p. 156, Haenel).
d. DXCVI. Si seruus sciente domino alienum seruum substraxerit uindiderit celauerit, in ipsum dominum animaduertitur, quod si id dominum ignorante commiserit, in metallum datur.	=	Coll. XIV., 2, 3.

9. A glossary which begins:

seua | crude prestolatur expectetur auidus | cupidus

and ends:

sciscitantes | interrogantes.

Julian's collection and its appendices are followed by a treatise *De Incestis* belonging to Moral Theology rather than to Jurisprudence. This is succeeded by a table of grades of cognation. A later hand has added Rotharith's Law CLIII. and the words *Omnis parentela . . . quomodo nos dicimus, ambrosius iudex hunc lege scrisi in hoc libro.* At the back of the folio containing Ambrosius' note, 157 b, begins the Collatio. It fills 24½ folios and ends with Title XVI., Chapter 3, § 13. The last word is *pertineri.* Then come notes on Jurisprudence and Ethics. The Codex concludes with the text from the Book of Proverbs: *Melius est uocare ad holera cum caritate quā ad uitulū faginatū cū odio.*

There are also several notes written on the margin and between the lines of the text.

The following are inserted in the Collatio:—

1. Title I., chap. 7, on the margin at the foot of the page (Cod. Just. IX. 16., 6.):

Impr̄. Justin̄. A. si quis cū telo ambulauerit hominis negandi causa, sicut his qui hominē occiderit pena subiacet.

2. Title II., chap. 5, on the upper margin above the page (=Pseudo-Eleutherius, Vol. I., p. 696, Mansi):

Judici non est sine accusatore dampnare, quia et dn̄s Judas, cū fur esset, quia non est accusatus minime abiecit.

3. Title IV., chap. 2, on the upper margin:

* *[Omnia ergo que] aduersus absentes in omni negotio aut loco aguntur [aut iudicantur, om]nino Vacue(n)tur quoniam absentem nullus addicit nec ulla lex dampnat. facile ergo homo hominem [fallere potest non] tamen deum cuius oculis omnia nuda sunt et aperta. Unde ait propheta: dominus nouit cogitationes hominum quoniam uane sunt.*

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* *Huelsen examined the Codex for Mommsen and reported that what is included in brackets is almost faded.* (*Mommsen, l. c., p.* 111).

On the lower margin:

Kp. Clerici qui in quacunque seditione arma uolentes sumpserint, reperti amisso ordinis sui gradu in monasterio paenitentia retrudantur.

4. Title XII., chap. 1.:

Fabor | S(cilicet) laus uel auxilio.

5. Title XIV., chap. 1.:

In Terp̄tatio [= *interpretatio*] *Plagiarius est, qui homine liberū rapit et uendit.*

6. Title XIV., Chap. 2:

After the words *item pronepotes*, when the Codex begins chapter CXXVIIII., occurs the direction inserted in the text: *require post capitulum CXXX*^{mo} *IIII*^{o} (which is the last in the book) *capitulum C*^{um} *XXXV*. The reason is the dropping out of the passage XVI.2.8 *si ex duobus* till XVI.2.10 *matrem eandem habuerint item*. It was at the end of the text which the copyist used, but he forgot to transfer it.*

There are many points of similarity between the Vienna and Vercelli Codices.

1. The number of folios. The Vienna has 184; the Vercelli 183.
2. Both Codices are large quarto.
3. There are double columns.
4. Julian's Epitome is divided into two parts.
5. The numbering of the Constitutions in both is often wrong.
6. Each contains an Index to the Rubrics of Julian.
7. Both have Interlinear and marginal annotations, and
8. An Appendix to the Epitome.

* In addition to the Three Codices, a fragment of the Collatio, Title I., chap. 7, introduced with the prescription *de homicidio qui aliquando absoluuntur aliquando damnantur. Iustinianus Rex* is found in a MS. collection of canons written in the 11th century in Upper Italy (Vallicelliano B. ii.; Vatican, n. xiii. 39; and Monte Casino, n. ii., 16). The Codex Bellouacensis (Beauvais), now in the Paris Library, n. 9652, formerly *suppl. Lat.*, 779, belonging to the ninth century (Haenel, preface to the Post-Theodosian Novels, p. 14), has, on the last folio (p. 164), after a paragraph of Alaric's Breviary, the beginning of Collatio Title X., with the superscription x. *de deposito*.

9. The numbering of the chapters in Julian's Epitome and in the *Lex Dei* is continuous.

10. The orthography and abbreviations are alike.

11. They both belong to the same century, though the Vienna Codex is later.

12. The same subscriptions are sometimes missing in both.

Some items are peculiar to the Vercelli MS., *e.g.*:—

1. The subscriptions to the Constitutions 85, 86, 89, 90, 92, 101, 102, 119.

2. Chap. XI., Decrees of the Pope Gelasius.

3. Some chapters of the acts of the Fourth Council of Toledo and the acts of the Fourth Council of Carthage.

The Collatio and the other elements common to the Berlin, Vienna and Vercelli Codices render it highly probable that they all emanate from one and the same source.[1] The probability is raised to a certainty on a comparison of the Collatio in the three Manuscripts.

The Collatio is more complete in the Vienna than in the Vercelli Codex, and most complete in the Berlin Manuscript, though the last lacks words which are to be found in the other Codices. Certain lines, however, sometimes up to the same word, are missing in all three copies. The conclusion of the Collatio is obviously defective in the Vienna and Vercelli Manuscripts. Whether even the Berlin Codex, which is fuller, presents the Collatio in its entirety is doubtful. A point of difference is the Chapters. The Titles are fairly uniform. But the divisions into chapters, as well as the number and beginning of each chapter were apparently determined by each scribe, arbitrarily and without any fixed principle. Thus, in the Berlin Codex, *idem* in the middle of a sentence, Title XII., Chap. 7, § 8, afforded the copyist ground for beginning a new chapter. So also in Title XVI., Chap. 3 § 3 starts a new chapter because of the word *continuatur*. In the Vercelli Manuscript, Title XI., Chap. 8, § 1, begins a new chapter on account of the phrase *et cetera* which the scribe wrote for *et ceterum*.

[1] Mommsen (*l. c.*, p. 114) thinks that the Vienna Codex is nearest the Archetype.

With such carelessness on the part of the scribes, there is no cause for wonder that the Chapters do not coincide.[1]

Of the Editions of the Collatio before Blume.

Blume notes 20 Editions of the Collatio before his appeared in 1833. The text of the Collatio has been edited separately three times, viz. in 1573, in 1574 and in 1656: about a dozen times together with other sources of Roman Law; viz. with the Theodosian Code and other portions of the Ante-Justinian Jurisprudence in 1586, 1593, 1607, 1815; with the Ante-Justinian Jurisprudence in 1672, 1717, 1737, 1744; with Ulpian in 1768; with Julian, among Pithou's observations to the Code and Novels in 1689. The earliest in this class is Stephanus' Edition in his *Juris Ciuilis Fontes an Riui*, which, however, omits other works now included in sources of Roman Law. Five times the Collatio has been edited together with works on sacred subjects, viz., with the *Lex Moralis*

1 Blume, who compared the Vienna and Vercelli Codices, gives the following comparative tables of Chapters for the Collatio :—

VIENNA. Chapters.	VERCELLI. Chapters.	VIENNA. Chapters.	VERCELLI. Chapters.
1 — 13	1 — 14	103 — 113	109 — 118
14 — 27	15 — 29	114 —(115)	119
28 — 33	30 — 36	116 — 119	120 — 124
34	37 — 38	120 — 124	125 — 128
35 — 51	39 — 56	125 — 126	129
52 — 66	57 — 72	127	130 — 134
67 — 89	73 — 96	128 — 132	*wanting.*
90 — 102	97 — 108		

Mommsen, in the Introduction to his edition of the Collatio, p. 121, illustrates this discrepancy between the Codices by a comparative table of the chapters in Title XI. *de abactoribus.*

At the beginning of title.	Berlin.	Vercelli.	Vienna.
before incipit	kp. DCLXXX.	kp. LXXXVIIII.	kp. LXXXIII.
,, c. 2	kp. DCLXXXI.	kp. LXL.[4]	kp. LXXXIIII.
,, c. 3	kp. DCLXXXII.	kp. LXLI.	kp. LXXXV.
,, c. 4	kp. DCLXXXIII.	kp. LXLII.	kp. LXXXVI.
,, c. 5	kp. DCLXXXIIII.	kp. LXLIII.	kp. LXXXVII.
,, c. 6	kp. DCLXXXV.	kp. LXLIIII.	kp. LXXXVIII.
,, c. 7	kp. DCLXXXVI.	kp. LXLV.	kp. LXXXVIIII.
,, *sed etiam*[1]	—	kp. LXLVI.	—
,, *eodem rescripto diui Hadriani*[2]	kp. DCLXXXVII.	kp. LXLVII.	kp. XC.
,, c. 8.	kp. DCLXXXVIII	kp. LXLVIII.	kp. XCI.
,, *si quis bouem*[3]	—	kp. LXLVIIII	kp. XCII.

1 Tit. II. 7. 4. 2 Tit. II. 7. 5. 3 Tit. II. 8. 1. 4 LXL. in this manuscript, here and elsewhere for XC.

of Th. Beza 1603; in Pithou's *Opera Sacra* 1609; *Critici Sacri*, London, 1660, Vol. VIII.; Frankfurt 1696, Vol. VIII.; Amsterdam, 1698, Vol. I., Part II., columns 193-248. Pithou's first edition was published in Paris after the massacre of St. Bartholomew. The editions may be placed under three categories. The first consists of those that closely follow Pithou's first edition; viz.: the Basel edition, 1574, and the five Collections of Sacred Law to which reference has been made above. For although the Editors all claim that they have corrected Pithou's notes, the emendations apply exclusively to typographical errors, some of which had been corrected by the Basel Editor. The second category consists of editions which more or less disregard Pithou's edition, even in the context, and either altogether omit his notes or give them with additions. Such are the editions published at Geneva, Leyden, Heidelberg and Lyons. The third category consists of editions which do not lightly overthrow the authority of Pithou's Manuscript, but wherever possible, correct its errors in the notes. Stephanus, Cujas, Schulting and Biener have worked on these lines. In this class must also be included the Paris Edition of 1689 which contains the notes of Pierre Pithou and of his brother, augmented from the Pelletere Library.

Of Commentaries there are altogether four, those of Pithou, Schulting and the two by the Cannegieters, Joseph and Hermann. Hermann Cannegieter gives the correct references to the texts taken from the Pentateuch.

A list of Authors who have worked at the Collatio is given in the Appendix. Since Blume, Huschke and Mommsen have edited the Collatio; Dirksen and Rudorff have written dissertations on it.

TITLE AND PLAN OF THE WORK.

THE current designation is Collatio or *Pariatio Mosaicarum et Romanarum Legum.*[1] This title cannot be traced to the Compiler, nor is it found in the Codices. It originated with the first editors and their contemporaries.[2]

The compilation has also been called *Fragmenta Pithoei,*[1] after their re-discoverer. It is sometimes styled *Lex Dei*[1] from the opening words.

The plan of the Compiler is to give texts from the Pentateuch followed by passages from the Roman Law bearing on the same topics.

There are 16 Titles, viz.: 1. Concerning Murderers; 1a. Accidental Homicides; 2. Aggravated Injuries; 3. Cruelty to Slaves; 4. Adultery; 5 and 6. Other Sexual Offences; 7. Theft; 8. False Testimony; 9. The Inadmissibility of the Testimony of Relatives; 10. Deposit; 11. Cattle-raiding; 12. Arson; 13. Removal of Landmarks: 14. Kidnapping; 15. Sorcery and other Forbidden Arts; 16. Statutory Succession.

The topics are not selected haphazard. The titles correspond to the Second Half of the Decalogue. Titles I. and IA correspond to the Sixth Commandment, "Thou shalt not kill." Titles II. and III. are corollaries. Titles IV., V. and VI. correspond to the Seventh Commandment, "Thou shalt not commit adultery." Title VII. to the Eighth Commandment, "Thou shalt not steal." Titles VIII. and IX. to the Ninth Commandment, "Thou shalt not bear false witness against thy neighbour." Titles X.–XV. exemplify various forms in which the infraction of the Tenth

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[1] The superscription in all the MSS. refers to the work as *Lex Dei.* The Vienna MS. begins Title IV., *Incipit de adulteris constitut.* III *de Legem Moysi.* Schulting, in a note to Paulus, v. 23, § 9, calls the book *Lex Dei.* Charondas, in Notes on Justinian's Code (xv. Note 3), and Cujas also refer to it as *Fragmenta Pithoei* or *Fragmenta a P. Pithoeo edita.* Another title adopted by editors is *Collatio Legum Mosaicarum et Romanarum.* Stephanus, in his edition 1580, and Cujas, in his edition 1586, name it *Lex Dei siue Mosaicarum et Romanarum legum uetus Collatio.* In the Geneva Edition 1586, it is called *Collatio legum Iudaicarum et Romanarum.* Marcilius, in his *Leges XII. Tabularum Collecta et Interpretamentum* (Paris, 1600: also in Otto's *Thesaurus,* 1733, Tom. iv., chap. 56) calls it *Legis Mosaicae Pariatio siue comparatio.* Heineccius (*ad leg. Jul. et Pap. Popp.*, lib. ii., chap. 7, p. 190) styles it *Pariator legum Mosaicarum et Romanarum.* See Blume, *Proleg., l. c.* vi., vii.

[2] See Schulting, Notes to the Collatio, 1, 1, note 1; Blume, *l. c.*, p. x. and in the *Zeitschr. f. Gesch.* R. W., x., p. 308.

Commandment, "Thou shalt not covet," may be manifested. Title XVI., "Of Intestate Successions," stands in a separate category. With the exception of this last and of Title IX, which is a pendant of, and closely connected with, Title VIII, they all treat of such wrongs to private individuals as are punished by the State.

The last title "Of Statutory Successions," belongs to a division of private law where intervention of the public authorities is called for, owing to a failure of testamentary disposition. Whether this title forms the conclusion of the book or whether it was intended as the beginning of the second part of a larger work now lost it is impossible to decide. Huschke and Rudorff think that the XVIth title completed the work.[1] Mommsen holds that it begins a new division no longer extant, and that the work, as we have it, is incomplete and fragmentary.[2]

The Collatio opens: *Incipit lex dei quam deus precepit ad Moysen.*

This superscription cannot be regarded as descriptive of the entire work; for then it should have been completed by some such clause as *et lex Romana quomodo conueniunt.* Mommsen regards the whole line *Incipit .... Moysen* as an interpolation by a later hand.

Hincmar,[3] quotes the Collatio under the general designation of *Leges Romanae* and also with the phrase *primo libro legis Romanae*, possibly because it stood first in a Codex of Roman Law, or because his Codex had the words *liber primus* at the beginning of the *Collatio.*

The titles into which the Collatio is divided are introduced by superscriptions and subscriptions. Do these form part of the original work, or have they been added by a later hand?

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[1] Huschke in the last note to the Collatio (p. 705, note 11) in his edition of the ante-Justinian Law: *Ceterum haec sententia tam apte in fine huius materiae posita est, ut ea ipsa hunc titulum finiuisse Collationis auctor existimandus sit.*

Rudorff in his Essay, *Ueber den Ursprung und die Bestimmung der Lex Dei oder Mosaicarum et Romanarum legum collatio* (pp. 279, 280), after speaking of certain laws of Constantine and Leo, says: *Diese Gesetze aber beginnen mit der Intestaterbfolge, mit welcher die Collatio im sechzehnten Titel de legitima successione abschliesst.*

[2] Mommsen appends to his edition: *reliqua desunt.*

[3] Hincmar, *Opp. ed. Sirmond*, Tom. i., p. 627, *Unde et leges Romanae decernunt in capitulis de stupratoribus*, and again *ibidem*, p. 634: *Sicut in primo libro legis Romanae capitulo sexto de stupratoribus et in capitulo septimo de incestis et turpibus nuptiis.* See Savigny, *Geschichte des roemischen Rechts im Mittelalter* 2², p. 282. See also discussion on quotation from Hincmar at the beginning of the previous Essay.

They are certainly older than the ninth century, for Hincmar, who wrote about 860,[1] quotes *de stupratoribus* and *de incestis nuptiis* in the same order and under the same rubrics as they are found in the MSS., though as we have seen, he numbers them sixth and seventh instead of fifth and sixth.

This is certain, that the division into titles lay in the original plan of the work. The titles, as a rule, begin with texts from the Pentateuch, which distinctly point to the subject matter that follows. To this rule there are but three exceptions. Title I. chap. 5, and Title VI. chap. 5 commence with Biblical texts which do not begin titles; and the Scriptural text at the beginning of Title VII. is introduced with a reference to the XII. Tables.

There is another indication of the division into titles. Where the same source is quoted more than once in the same title, the second and succeeding excerpts are preceded by such phrases as *Item* or *Idem* (IV. ch. 9 and 10); *idem sic* (IV. 11); *idem eodem libro et titulo* (VIII. 6); *Ulpianus libro et titulo qui supra relati* (I. chap. 6); *Paulus libro et titulo qui supra* (I. chap. 7); *Item Paulus libro qui supra et titulo* (I. chap. 4); *Idem eodem libro* (XVI. chap. 6, 7, 9); *Idem libro qui supra* (XVI. chap. 8). But where a new title begins, excerpts have always a complete superscription with the name of the author and title of his book, even where the previous title concludes with a quotation from the same work. This principle is consistently carried out (Cp. Title IV., chap. 12, with Title V., chap. 2; Title VI., chap. 3, with Title VII., chap. 2; Title XI., chap. 7, with Title XII., chap. 5; Title XIII., chap. 3, with Title XIV., chap. 3).

The application of this principle settles the question whether Title IX. is to be regarded as the conclusion of Title VIII. This view is favoured by the subscription at the end of Title IX. in the Vienna MS—*Explicit de falso testimonio*—which corresponds with the superscription to Title VIII. In the Berlin M.S., however, the subscription to Title IX reads:—*Explicit titulus de familiaris testimonium non admittendo.* But the crucial test is the fact that at the beginning of Title IX., an excerpt is given from Ulpian, introduced with name of author and title of work, set out in full, though both are already quoted at the conclusion of Title VIII. Hence it may be concluded that we have here two separate titles. And, in fact, they treat

[1] *Duemmler*: *Geschichte des Ostfrankischen Reichs*, I., p. 457.

of different topics. Title VIII. discusses the penalties attached by the *Lex Cornelia Testamentaria* to False Testimony. Title IX. enumerates the degrees of relationship to which the *Lex Julia de Vi* granted exemption from giving evidence, and also states the grounds for suspecting the truth of testimony tendered.

The superscriptions are based on the headings to the principal quotations from the Roman Law cited in the titles, usually the first but sometimes a later one.[1] Two Titles (VIII. and IX.) are exceptions. The superscriptions to these adequately express the contents, but are not found in the headings to the excerpts. The superscriptions and subscriptions are generally but not always identical.[2] The variations are slight, and may be due to copyists.[3] The subscriptions are regarded by Mommsen as additions by a later hand. He therefore omits them in his edition.

The texts from the Pentateuch are given in condensed form, as the compiler's object was not to quote the scriptural texts literally, but only to reproduce their substance. They are not taken from Jerome's Vulgate, but either in a free translation from the Septuagint, or from the Itala,[4] properly styled the Vetus Latina.

The phrase *sicut lectio manifestat* (Title VII., chap. 1) would point to the Itala which was in common use. Mommsen also, in his edition of the Collatio (pp. 131-134) sets forth texts in Augustine's Speculum and the ancient Lyons and Würzberg Codices, which show an agreement in style between the Itala and the Collatio.[5] Hincmar, in quoting the Collatio, gives the full

[1] Cp. superscription of Title iii., *De iure et saeuitia dominorum*, with heading to iii. 3. *Ulpianus.....de dominorum saeuitia*; superscription to Title vii., *De furibus et de poena eorum*, with heading to vii. 4, *Ulpianus ..... de furibus*; superscription to Title xiii., *De termino amoto*, with heading to Title xiii., *Ulpianus.....de termino moto*. The superscription to Title xv., *De Mathematicis, Maleficis et Manichaeis*, combines part of the heading to xv. 2, *Ulpianus.....de Mathematicis et Vaticinatoribus*, and the whole of the ending to the heading of xv. 3, *Gregorianus.....de Maleficis et Manichaeis*.

[2] Cp. Title III., *Incipit: De iure et saeuitia dominorum; Explicit: De dominorum saeuitia cohibenda*. Title VI., *Incipit: De incestis nuptiis; Explicit: De adulteris, stupratoribus et incestis nuptiis*. This last named subscription combines the rubrics of Titles IV., V. and VI.; Title VII., *Incipit: De furibus et de poena eorum; Explicit: Titulus de furibus*. Title XV., *Incipit: De Mathematicis et Manichaeis; Explicit: De Mathematicis, Maleficis et Manichaeis*.

[3] Blume, *Zeitschrift für Rechtswissenschaft*, Bd. X., p. 303.

[4] The Itala was the version in use before Jerome's translation, and was made from the unrevised edition of the Septuagint (See Smith's "Dictionary of the Bible," pp. 3453, 3454).

[5] See Appendix, pp. 151-158. This was already noted by Blume and earlier editors. There is an extract from Venema's study of these texts in H. Cannegieter's *Comm. ad Fragmenta Veter. Jurisprud.*, p. 5. See also Fr. Münter: *Specimina Fragmentorum Version. Antiquar. in libris jur. et Rom. et Can. Miscellanea Hafn. theolog. et philolog. argumenti.* Tom. II., p. 89, Hafn., 1824. Quoted in Blume.

scriptural texts from Jerome. The real reason why the Vulgate was not used is because it had not yet been adopted as the authorised version of the Church. While the Septuagint was, at a very early period, invested with canonical authority,[1] the use of the Vulgate by the clergy cannot be traced back beyond the 6th century ;[2] and it was not till 1546 that the Council of Trent, in its fourth session, made its exclusive use obligatory in the Roman Church.[3]

The texts from the Pentateuch are placed first as being the expression of the Divine will. But there is no intention to give a detailed exhaustive exposition of the whole of the Mosaic legislation, or even of its jurisprudence. Single texts only are given, and these are frequently not fully set out.

The topics treated in the Collatio are all contained in Exodus, chaps. xxi. and xxii. But not all the topics found in these chapters are referred to in the Collatio. There is, for example, no reference to the emancipation of Hebrew slaves after six years' service, the subject with which Exodus, chap. xxii. opens. The reason of the omission may be that the treatment of slaves in tne Roman Law fell below the standard of humanity enjoined in the Mosaic

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[1] *Augustine De Ciuitate Dei, XVIII., chap. 42,* at the end. After recounting the legend that the seventy translators, though in separate rooms, gave the same version of the Bible, the Bishop of Hippo concludes: *et ideo tam mirabile Dei munus acceperant, ut illarum scripturarum, non tamquam humanarum, sed sicut erant, tamquam diuinarum, etiam isto modo commendaretur auctoritas credituris quandoque gentibus profutura, quod iam uidemus effectum.*

[2] "At first Augustine thought the new version of the Old Testament (Jerome) too revolutionary, and almost to the end of his life clung to a belief in the inspiration of the Seventy. He wrote of Jerome's translation, however, with increasing respect, and occasionally quotes from it (*e.g., De Civitate Dei)*, and in his last work, the genuine *Speculum* (a collection of Biblical extracts left unfinished at his death in 430), he follows the new version wholly, except where he quotes from memory. In the 6th century, Cassiodorus seems to have treated the two versions on an equal footing, but Isidore of Seville in the 7th century uses Jerome exclusively. From that time it really deserves the name "Vulgate," now universally applied to it, though, as a matter of fact, it was not so called before the time of Roger Bacon. In Jerome's own works *Vulgata* means the "Old Latin" (Hastings' Dict. Bible, col. 5,024, 5,025).

[3] The Fourth Session of the Council of Trent, held on the 8th day of the month of April, in the year MDXLVI. "The Canons and Decrees of the Council of Trent." London, 1848, p. 19.

The *Acta Concilii Tridentini*, published at Antwerp, 1546, pp. 92, 93: *Decretum tertiae (sic) sessionis Concilii Tridentini, quae celebrata fuit quinta Aprilis eodem anno. Insuper eadem sacrosancta Synodus considerans nō parū utilitatis accedere posse ecclesiae Dei, si ex multis Latinis editionibus, quae circumferentur sacrorum librorum, quaenam pro authentica habenda sit, innotescat: statuit et decreuit ut haec ipsa uetus et uulgata editio quae longo tot seculorum usu in ecclesia ipsa probata est, in publicis lectionibus, disputationibus, praedicationibus, aut expositionibus, pro authentica habeatur, et quod eam nemo reiicere quouis praetextu audeat uel praesumat.*

Code. The biblical examples of the *Lex Talionis* are omitted, probably for the opposite reason. Roman Law, at the time of the Collatio, had outgrown the crude early doctrine, just as had the rabbinic[1] legal development, which interprets "eye for eye," and "tooth for tooth" as meaning monetary compensation. Though there is abundant material in the Pentateuch from which a catena of passages might have been drawn for each of the topics of the Collatio, the compiler has chosen to place at the head of each title a single scriptural text—that which seemed to him the fittest parallel to the principle of Roman Law he was expounding. In two cases, he gives texts in the middle of Titles. Title I., chap. 5, continues the text in Title I., chap. 1., and Title VI., chap. 7, § 1 repeats the substance of the text in Title VI., chap. 1. In the former case, the scriptural verse is an apt introduction to the corresponding rules of the Roman Law which follow. In the latter case the text at the beginning of the title is included in an altered form with other texts placed at the end of the title in order to emphasize the heinousness of incestuous unions.

The topics and their arrangement were, as already remarked, suggested by the second half of the Decalogue, and do not follow either the order in Exodus xxi. or in Leviticus xviii. and xx. What is joined together in the Pentateuch is broken up in the Collatio, if this will better serve the governing principle of comparison with the Roman Law. Thus, Breach of Trust and Injury to Property are joined together in the Pentateuch, Exodus xxii. 1-13; in the Collatio they are distributed under Titles VII., X. and XII. So, too, the rules concerning Testimony are divided in the Collatio under Titles VIII. and IX.

The excerpts from the Roman Law are taken from the Five Jurists and from the Hermogenian and Gregorian Codes. Papinian's writings are used sparingly, except in Title IX., where numerous extracts are cited from his *Liber Singularis de adulteriis*. Of Paulus' works, the *Libri Sententiarum* are cited, and Ulpian is represented exclusively by his *de officio proconsulis*. The Compiler aimed at the inclusion of those

[1] Babylonian Talmud, *Baba Kama*, 83*b*. and 84*a*., in the discussion on the Mishna, *ibid*, chap. viii., § 1: "If one inflicts physical injury on another he has to pay compensation for five things: actual damage, pain suffered, cost of medical treatment, loss of employment, humiliation."

[2] See Sources of Roman Law, in Appendix, pp. 277-280.

passages which pregnantly represented actual practice. Hence, the special attention paid to Paulus' *Sententiae*.[1] The Compiler referred to the latest Constitutions[2] (Title XIV., chap. 3, § 6). He also gives (Title V. 3), a Constitution of Valentinian, Theodosius and Arcadius, which is contained in the Theodosian Code (IX. 7, § 6) in a mutilated form (from *omnes quibus flagitii*) and with a different subscription.[3] The Constitution is preceded in the Collatio by an introductory paragraph ending with the unusual phrase *Item Theodosianus*. Though opinions have varied in the past, it is now accepted that this Constitution was not taken by the Collatio from the Theodosian Code.[4]

Godefrey (Gothofred),[5] in his commentary on the Theodosian Code *in loco*, suggests that the Constitution was taken by the Compiler of the Collatio from the Theodosian Code, in which it originally stood, as is shown by the phrase *Item Theodosianus*; that it afterwards dropped out of the MSS. of the Code and was re-inserted in a shortened form taken from Alaric's Breviary.

Huschke[6] argues from the fact that the compiler uses the Gregorian and Hermogenian Codes as regular sources, while

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[1] See Theod. Cod., I. 4, § 2. *de resp. prudent.*; where Constantine speaks of Paulus' *Sententiae ad filium* as *libros plenissime luce et perfectissima elocutione et justissima iuris ratione succinctos*. They came to be called *Receptae Sententiae*, because, though Paulus first wrote them for the instruction of his son, their excellence brought them into general use.

[2] *Ex nouellis constitutionibus*. This, according to Huschke, refers to Constitutions of Diocletian and Maximian, 287 (Cod. Just., IX. 20, § 7), and of Constantine, 315 (Cod. Theod, IX., 18), (Cod. Just. IX. 20, § 16).

[3] Pp. in *foro Traiani*, VIII., Id., *Aug. Valentiano*, A. IV. *et Neoterio Coss*, instead of *Prop. pr. Maias Rome in atrio Mineruae*.

[4] Pithou is doubtful as to the source. Note i., 1: *Illud potius mirer, cur hic idem de impudicis legem non ex Praefecturae scriniis, sed ex Theodosiano Cod. pleniorum recitat quam hodie in corpore ipso extet*..... (Note on v. 3) *sunt haec aut collectoris aut alterius cuiusdam qui haec postea ex Theodosiano adiecit, uel potius ex Praefecturae urbanae archiuis. Nam in ipso codice haec constitutio breuius relata est.*

[5] Godefrey says that the phrase "item Theodosianus" proves that the constitution was taken from the Theodosian Code, from which it afterwards dropped out, and in which it was re-inserted in a shortened form :

Extat autem haec lex praefatione et epilogo apud Authorem coll. ll. Mosaicarum tit. de stupratoribus.....Quo argumento liquet ut multas alias constitutiones, ita et hanc quoque legem nostram ab Alaricianis decurtatam. Id enim uerius est quam ut credamus (quod suspicabatur V.C. Pithoeus) ex Praefecturae Urbanae scriniis a collectore illo, uel ab alio, hanc legem ita plenius relatam. Aperte enim, ex Codice Theodos. eam allegat author seu Pariator ille Item, inquit Theodosianus.

[6] Huschke (*Zeitschrift für Geschichtliche Rechtswissenschaft*, Bd. XIII., pp. 3-6), Haenel (*Edition of Th. Cod.*, ix. 7, 6,), and Mommsen (*Edition of Collatio*, p. 127) are certain that the compiler did not know the Theodosian Code.

apart from this passage, he only refers to the Theodosian Code once again (cp. *Sciendum est ex nouellis constitutionibus*, Title XIV., at the end with Th. Cod., IX. 18), that the quotation here was not taken from that Code.

Item Theodosianus is accordingly a later addition by a scribe who found the Constitution in the Code, and thought a reference to it should be inserted in the Collatio. The phrase *Item Theodosianus* instead of *Theodosius in Libro IX.*, is not in the style of the Collatio. Finally, the different subscriptions show that the Constitution was taken in the two works from different sources.

Haenel[1] and Mommsen[1] agree with these views, and the latter edits *Item Theodosianus* as an interpolation.

The Gregorian and Hermogenian collections of Constitutions are used equally. There is the same number of extracts from each. But citations from the Gregorian Collection occur in five titles: those from the Hermogenian only in two titles. Extracts from both are given near each other, as is indeed also the case with the Vatican fragments (266a, 270, 272).

The texts from the Jurists and Codes are quoted faithfully and exactly.[2] The source and date of each extract are carefully stated in the superscription and subscription respectively. Title VI., chap. 5, quotes one of Diocletian's Rescripts from the Hermogenian Code, followed by a statement (VI., 6, 1) of the variation in its date, as given in the Gregorian Code. Occasionally, however—as in Title V., chap. 3; Title X., chap. 5; Title XV. chap. 3, § 8; Title VI., chap. 4—Constitutions are quoted without naming the Emperors under whom they were issued. As regards the first of these exceptions, Huschke[3] thinks that this Constitution of Valentinian, Theodosius and Arcadius had only just been issued; hence the Emperors are not mentioned in the subscription.

Where the Compiler begins a passage but does not complete it, he adds the phrase *et reliqua*. The instances are Title I., 3, § 1; I., 12, § 1; II., 2, § 1; IV., 3, § 6; VII., 3, § 4; VIII., 7, § 3; IX., 2, 3.

In two cases (Title VII., chap. 1, and Title XIV., chap. 3, § 6) the Compiler does not quote verbatim, but only gives the sense of

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[1] See note 6 of previous page.

[2] Cp. Gaius iii. 5 with Collatio xvi. 2, and Ulpian Fr. xxvi. with Collatio xvi. 4

[3] *l.c.*, p. 7.

the passages or a summary of their contents. This he clearly indicates.

Excerpts from the Jurists usually precede those from the Constitutions. But there are exceptions to the rule. Thus in Title Ia. *De casualibus homicidiis*, excerpts from Ulpian (chap. 6) and Paulus (chap. 7) are followed by rescripts from the Gregorian Code (chaps. 8–10), which, in their turn are succeeded by extracts from Ulpian, Modestinus and Paulus. Apparently, this order was chosen, because it exhibits more clearly the parallelism between Roman and Mosaic Jurisprudence. Title VI. gives an extract from the Constitutions and then one from the Jurist Papinian, because the former discusses the whole principle of the law, the latter only a single point.

The Compiler's own remarks deserve notice. Beside the rubric at the beginning of the work, *Incipit lex dei quam dominus (s. deus) dedit ad Moysen*, which Dirksen and others regard as part of the original text, while Mommsen thinks it a later addition, the formularies introducing the scriptural texts, *Moyses dei sacerdos haec dicit* (I. 1.); *Moyses legaliter dicit* (I. 5); *Moyses dicit* (IV. 1); *Moses dicit* (V. 1); *Lex diuina sic dicit* (VI. 7); *Scriptura diuina sic dicit* (XVI. 1), set up a claim of divine authority for the Law of Moses.

A passage at the end of Title V. chap. 2 gives expression to the Compiler's aspiration that the Mosaic Law should serve as a norm for Roman Legislation. After concluding his quotation from Paulus' *Sententiae* on the punishment of pederasty, which was only capital when both participants were consenting parties, the compiler adds: *Hoc quidem iuris est, mentem tamen legis Moysis Imperatoris Theodosii constitutio ad plenum secuta cognoscitur.* The writer thus approves the wholesome stringency of the Mosaic Law, censures by implication the ancient *jus*, which he contrasts with the Imperial Legislation,[1] and praises the latter for reflecting the spirit of the Pentateuch. The Emperor's Constitutions are to correct the want of harmony between the Roman and the Divine Law.

Characteristic also is Title VI., which speaks of Incest. After

[1] A modification effected by a Constitution in the penalty meted out by the ancient *jus* is referred to in Title xiv., chap. 3, § 6, on Kidnapping. A quotation from Ulpian concerning the *Lex Fabia de plagiariis* is followed by this statement: *Sciendum tamen est ex nouellis constitutionibus capitali sententia pro atrocitate facti puniendos: quamuis et Paulus, relatis supra speciebus, crucis et metalli huiusmodi reis irrogauerit poenam.*

quoting a scriptural text, prescribing death for forms of the offence, followed by passages from the Roman Jurists and Constitutions, which show no correspondence with the Mosaic Law in regard to the penalties, the Compiler furnishes a second and complete *résumé* of the Pentateuchal maledictions on Incest, prefaced by the statement: *idem dicitur in eos qui incestas nuptias contraxerunt. maledicti tamen sunt omnes incesti per legem, cum adhuc rudibus populis ex diuino nutu condita isdem adstipulantibus sanciretur. et utique omnes maledicti puniti sunt, quos diuina et humana sententia consona uoce damnauit.*

The introduction in chap. 4 of this Title is also noteworthy. *Gregorianus libro quinto sub titulo de nuptiis. Exemplum litterarum Diocletiani et Maximiani impp. talem coniunctionem grauiter punire commemorat.* This passage clearly indicates that the compiler considered the ordinary Roman *Jus* too lax, and needing correction by Imperial legislation.

Significant, too, is the introduction in Title VII.: *Quod si duodecim tabularum nocturnum furem [quoquo modo, diurnum] autem si se audeat telo defendere, interfici iubent, scitote, iurisconsulti, quia Moyses prius hoc statuit, sicut lectio manifestat. Moyses dicit, etc.* The text from the Pentateuch is exceptionally preceded by a citation from the Roman Law. This departure from the regular practice is connected with the underlying idea of the previous passage. At the conclusion of Title VI., the Compiler emphasizes the stringency of the Divine Law. At the beginning of Title VII., he points out that, in regard to theft accompanied by violence, the Law of Moses was an anticipation of the Law of the Twelve Tables.

These considerations prepare the way for a discussion of the Problems of the Purpose of the Collatio, its Date, and Authorship.

PURPOSE OF THE COLLATIO.

THE purpose of the Collatio is nowhere explicitly stated, and has given rise to much diversity of opinion.

Its object was not to teach Roman Lawyers the Law of Moses; for then, more passages would have been cited from the Pentateuch. Nor had the Compiler the Christian Clergy exclusively in mind, for he addresses the Roman Advocates as well: *Scitote juris consulti.*[1]

Blume's view is that the aim was to point out the similarities between the Roman and the Mosaic systems of Law, and thus to demonstrate that the former was derived from the latter.[2]

Dirksen goes further and suggests that the author desired that the judges of the Roman Empire should decide cases to which Roman Christians were parties in conformity with the Mosaic as well as with the Roman Laws.[3] This view is groundless. To have applied in the Courts both systems of Jurisprudence would have occasioned endless confusion, and, at that time already, no Christian would have felt himself bound by the Mosaic Law in such matters as Inheritance.

Huschke holds that the aim of the Collatio was to exhibit the agreement between the enactments of the Roman and Mosaic systems, and thus check the arrogance of the heathen jurists who exalted the Roman Law at the expense of the Divine

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[1] Collatio, Title vii., chap. 1, § 1.

[2] Blume, *Proleg., l. c.*, p. 8. *Maxima inter Cassiodorum nostrumque auctorem non solum sententiarum sed etiam dicendi generis est similitudo. nam etsi Hieronymos, Augustinus, aliique iam ante Cassiodorum de similitudine ac dissimilitudine diuini humanique iuris saepius egerint, pauci tamen praeter Tertullianum in ea sententia fuisse uidentur ut omnia humana iura a Moysis legibus tamquam communi fonte essent deriuanda, quod Cassiodorum potius Isidorumque statuisse uidemus.* These views, referred to by Blume, are expressed by Tertullian, *Apologetic.*, chap. xlv.: *Dum tamen sciatis ipsas quoque leges uestras quae uidentur ad innocentiam pergere, de diuina lege ut antiquiore forma mutuatas.* At a later period Leo Magnus declared (Epistle 167), in reference to a matrimonial cause, *multo prius hoc ipsum Domino constituente, quam ipitium Romani iuris existeret.*

[3] Dirksen, *Hinterlassene Schriften* ii., p. 125. *Irren wir nicht, so ist in unserer Rechtssammlung überall nicht die Bekämpfung des Heidentums durch das Christentum bezweckt, sondern vielmehr der Plan verfolgt worden, zu zeigen dass die christlichen Einwohner des römischen Reiches nicht ausschliesslich nach den geltenden weltlichen Rechten gleichviel ob heidnischen oder christlichen Ursprungs in juristischen Verhältnissen zu beurteilen seien, sondern dass auch dem göttlichen Recht eine selbstständige Geltung und Anwendung abseitens der weltlichen Gerichtsbarkeit vindicirt werden müsse.*

Legislation, condemned the latter as antagonistic to the institutions of the Roman Empire, or disparaged it as inferior in value to the Roman Legislation.[1] The Compiler of the Collatio, accordingly, distributed his material under various titles, aptly drawn from different branches of law; placed at the head of each title a precept of the Mosaic Code, and then gave extracts from the Five Jurists, the Hermogenian and Gregorian Codes, and occasionally the new Constitutions, to show what a luxuriant crop had sprung up out of the seeds of Mosaism.[2]

In criticism of this view, it has been pointed out[3] that already in Theodosius' day, and even at an earlier period, the need for defence against the pretensions of heathendom no longer existed. And indeed, if the purpose of the Collatio was to humble heathen jurists by exhibiting the glorious splendour of the Divine Legislation, that purpose has not been achieved. The texts from the Pentateuch are few and meagre where they might have been numerous and full; and they are swamped by extracts from the Jurists and the Codes. Again, if the Collatio was intended to be apologetic, the order of the citations from sacred and profane sources respectively should have been reversed. Examples of rules of Roman Law ought to have come first, followed by full and varied quotations from the Pentateuch, and stress might also have been appropriately laid upon the spirit of humanity and equity which informs the Mosaic legislation.[4]

Another suggestion is based on the fact that the Biblical texts cited are all from the Pentateuch. Hence the conjecture that the permission accorded by the younger Theodosius and his co-Regents to Jews to practise in Roman Courts (Theod. Cod. xvi. 8, chap. 2-5, and 24, *De Judaeis*), may have given birth to the Collatio, which was to serve budding Jewish lawyers as a guide.

This theory can be confidently dismissed as baseless.[5] There is no reference to the work in Jewish literature, though there is abundant evidence of the influence of Roman Law on

[1] Huschke (edition Ante-Justiniani Juris, etc.), p. 646; cp. Huschke, ibid., p. 669, notes and 7, on Title vi., chap. 7; p. 670, note 2 on Title vii., chap. 1, § 1.

[2] Huschke, *l.c.*, p. 646.

[3] Dirksen, *Hinterlassene Schriften*, ii., pp. 124 and 125

[4] See "Additional Notes" (Jewish Law), p. 159.

[5] Dirksen, *l. c.*, p. 126, note 10. H. Zimmern, *Geschichte des Röm. Privat-Rechts* Tom. i., § 7 (not in British Museum) *apud Blume*, points out that the author might have been a Jew. This had already been suggested by Freher (*Parerg*, 1, 9,) only to be rejected by him. See note 2 at the beginning of the Essay on the Authorship of the Collatio, p. xlix.

Talmudic Jurisprudence.[1] The reason why the Compiler limits his selection of Biblical texts to the Pentateuch is because, in the whole of Sacred Writ, the Mosaic Legislation alone offered him material for comparing and contrasting the Law of God with Roman Law.

The most reasonable view is that the Collatio was prepared for the instruction of Christian clerics, and served as an introduction to the study of the Roman Law, perhaps also as an elementary guide in practice. This would account, on the one hand, for the amplitude of the references to the Roman sources, and, on the other, for the arrangement of the topics according to the second half of the Decalogue, which contains the fundamental principles of the duties to our neighbours. It would explain how the Collatio came to be regarded as one of the *Fontes Juris Romani*; its use by Hincmar in the divorce of Lothar and Tetburga; why it was found in the libraries of churches and monasteries, bound in the same codices with legal and theological matter.

The sentiments of the book are undoubtedly that the Divine Law is superior to human laws, that it answers better to the needs of humanity, and should influence legislation. These views are quite natural on the assumption that the Compiler was a Christian. If he was, at the same time, a cleric, it would account for the stress laid upon purity in sexual relations; it would explain the grief he felt at the prevailing laxity of morals, his indignation at the light penalties inflicted by Roman Law for Incest, and his desire that the Christian Rulers should correct the vices of the Empire by visiting this class of offence with heavier punishments, and thus act more in conformity with the rigorous standard of the Pentateuch.

These sentiments, however, it must be borne in mind, only find expression in isolated passages, and do not of themselves constitute the main purpose of the book, which clearly was *to teach Roman Law.*

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[1] See Jost, *Geschichte der Israeliten*, iv., p. 240, and Z. Fraenkel (*der gesetzliche Beweis nach Mosaisch-talmudischem Recht*, p. 55 *seq.*) The last author denies direct borrowing, but admits influence of Roman on Jewish Law. *Dieses Recht ist aus verschiedenartigen Elementen zusammengeflossen . . . . teils wurde Manches von den Rechten der Nationen unter denen die Juden lebten, der Griechen, Römer und der Perser entnommen.*

DATE AND PLACE OF COMPOSITION.

THE views concerning the date of the Collatio vary considerably. The opinion formerly held was that it belonged to the second half of the fifth century. Thus Pierre Pithou assigned it to a date later than 438, because it contains a Constitution of the Theodosian Code published in that year; but earlier than 445, or at least before the time when the collected novels were added to the Theodosian Code, since the Compiler of the Collatio would not have left unused Valentinian's novel, *De Homicidiis casu an uoluntate factis* of the year 445 (Haenel, *Nouellae Constit. Theodosii II., Valentiani III., etc.*, Title XIX., p. 186), if it had already been known.[1] Freher[2] and Jac. Gothofred[3] are inclined to ascribe the work to the end of the fifth or the beginning of the sixth century. The latter[4]

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[1] Pithou's Prefatory note. *Nunc de collectore huius libelli cuius nomen titulumque exemplar ipsum prioribus duabus paginis purum non praetulit hoc tantum dicere possumus, uideri eum Theodosii iunioris temporibus uixisse, et post consulatum quidem ipsius* XV. (should be XVI.) *quo demum Codex editus legitur, ex quo hic constitutionem retulit unam, non ommissurus, ut uerisimile est, de homicidio non uoluntario Valentiniani singularem legem si tum quoque edita, aut in certum Novellarum corpus redacta fuisset. Sed de re incerta nihil temere affirmare uelim.*

[2] See note 3 to page XLIX.

[3] *Proleg. ad Th. Cod.*, chap. 3, p. CXC., Lugduni, 1665.

[4] Examples given by Gothofred:—

Collatio.	Cassiodorus.
Tit. i., chap. 5, 1. *Moyses legaliter dicit.*	Lib. vi., formula 8. *proximos defunctorum nobis legaliter anteponis.* Lib. iv., ep. 37. *prouocasse legaliter.* Variarum 19. *legale compendium.*
Tit. v., 7, 1. *quos diuina et humana sententia consona uoce damnauit.*	9 Var. 9. *consonam uoluntatem dixit.*
Tit. vii., 1. i. *sicut lectio manifestat.*	4 Var. 39; 10 Var. 16 and 17, uses the word in reference to Biblical texts.

The Interpretation of the Theodosian Code, attributed to Arianus, uses *ad plenum* for *plene*, and *secuta cognoscitur* for *secuta est*. The opposition of *ius* and *lex* is frequently found in the Interpretation of Arianus. The following are examples of late Latinity:

modo instead of *nunc*. *modo ipse loquitur*, in Title i. 3, 2.
talis, instead of *hic:*
in talem coniunctionem, in Title vi. 4.
talem constitutionem, in Title i. 9.
tale rescriptum, in Title i. 10.
de terminia mota, superscription to Title xiii.
supra relatis speciebus, in Title xiv. 3, 6.
nouellas constitutiones, in Title xiv. 3, 6. Compare Theodoric's Edict at end.
plagiatores, instead of *plagiarii*, in Title xiv. 3, 6.

relies on the similarity of the language to that of Cassiodorus and contemporary writers, and on the fact that the author of the Collatio was careful to give not only dates, but titles of chapters, and furthermore was able to compare the differences in date and Consulship of Constitutions as reported in the Hermogenian and Gregorian Codes. All these data lead him to believe that the writer lived before the time of Justinian, when the Theodosian Code had not yet been tampered with, and that he was probably a contemporary[1] of Cassiodorus. Blume[2] is of the same opinion, and supports it by the statement that, while Jerome, Augustine, and others before Cassiodorus frequently treated of the similarities and differences between the Divine and the Human Laws, Tertullian[3] clearly enunciated the doctrine that human legislation has its source in the Law of Moses, a view which Cassiodorus[4] and Isidore[5] still more strongly laid down. Blume further argues that the use of *quia* for *quod* in the passage at the beginning of Title VII.: *Scitote iuris consulti quia Moyses prius hoc statuit*—a use probably derived from the Greek ὅτι—and the conjunction of *incipit* with the Accusative in the rubric at the commencement of the Collatio, *Incipit legem Dei*, as well as the phrases apparently of late Latinity mentioned by Gothofred, point to the close of the fifth century as the date of the work.

The Latinity prevalent at the close of the fifth century is, however, to be found much earlier among the church writers,[6]

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[1] *Quare eo meus inclinat ut credam circa decursum sexti saeculi scriptorem hunc uixisse, ante Justiniani tempora.....quo tempore Codex Theodosianus forte nondum a barbaris delibatus fuerat, et Cassiodori proinde coaeuum putem.*

[2] Blume, ro] g. to Collatio, p. viii., *ibid*, note 12.

[3] Tertullian, Apolog. 45: *dum tamen sciatis, ipsas quoque leges uestras (sc. ea), quae uidentur ad innocentiam pergere, de diuina lege ut antiquiore forma mutuatas esse.*"

[4] Cassiodorus, lib. 4, var. 41; *ibid*, lib. 7, var. 46: *Institutio diuinarum legum humani iuris ministrat exordium, quando in illis capitibus legitur praeceptum, quae duobus tabulis probantur ascripta. sacer enim Moyses diuina institutione formatus Israelitico populo inter alia definiuit, etc., hoc prudentes uiri sequentes exemplum.*

[5] Isidore, Origin. vi., 8, quotes under the *genera opusculorum. Praecepta sunt quae aut quid faciendum aut quid non faciendum sit docent. Quid faciendum ut dilige deum teum et honora patrem tuum et matrem tuam. Quid non faciendum ut non moechaberis, non furtum facies, similiter et gentilium praecepta uel iubent uel uetant. Primus autem praecepta apud Hebraeos Moyses scripsit.*

[6] *Rudorff, über den Ursprung und die Bestimmung der lex dei oder Mosaicarum et Romanarum legum Collatio* 275, 276. and Huschke, *Ztschrift. f. Geschichtl., Rechtsw*, xiii. (1846), pp. 22-24.

and some instances of this late style, are found in the earlier constitutions and classical writers.[1]

More recently it has been denied that the Compiler knew the Theodosian Code. So, for instance, Haenel[2] dates the composition after 426 (the year of the Law of Citations) possibly after 429, the latter being the date of Theodosius' project[3] to compile those portions of *ius* and *lex* which were still in use, and which, according to Haenel, inspired the preparation of the Collatio. It was composed before 438, because, had the author of the Collatio known the Theodosian Code, he would have quoted the Constitution of Theodosius I. and Arcadius incorporated in Title V., chap. 3, with statement of book and title, as in the case of citations from the Gregorian and Hermogenian Codes. This, however, he has not done.

Heimbach[4] accepts the latter argument but not the former.

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[1] Title i. 5: *Moyses legaliter dicit. Legale genus questionis* occurs in Quintilian, 3, 5, 4 and *ibid*, 8, 4, *legales tractatus. Legalis uita*=Life in conformity with the Law, n Tertullian, *advers. Marcion*, 4, 25.

Title i. 2: *modo ipse loquitur Ulpianus. Modo* for *nunc* is used by writers of the classical period. Tibull. 1., 125, *iam modo non possum contentus uiuere paruo;* See also *Vergil, Aen.*, IX, 140.

Title v. 2, *Hoc quidem iuris est, mentem tamen legis Moysis Imperatoris Theodosii constitutio ad plenum secuta cognoscitur.* The antithesis between *jus* (=*responsa iurisprudentum)* and *constitutio* occurs already in a Constitution of the year 422 *(l.* 17, *C. de agric.*, xi. 47) in the phrase *et jure et legum auctoritate declaratur.* For *Ad plenum*—a unique phrase—there is a parallel in Macrobius, end of the 4th century, *Somn. Scip.*, 1, 5, *non pure nec ad integrum carens corpore.* The use of *cognoscitur* (=*noscitur, dignoscitur*), *esse* instead of *esse apparet* or *est*, is common already in Constantine's time. *l.* 7, *Th. C., de exact.* (xi. 7); *l.* 2, *Th. C., ne collat. translat.* (xi. 22); *l.* 3, *Th. C., de protostas.* (xi. 2); *l.* 2, *Th. C., de indulg. debit.* (xi. 28). The same remark applies to the frequent use of *talis* for *hic*, formerly only found in the poets.

Title vi. 5, *quos diuina et humana sententia consona uoce damnauit;* cp. *Apuleius, Met.* 2, *totius orbis consono ore celebrari*, and *l.* 10 (8), *Th. C., de diu. rescript* (1, 2), *consultorum omnium consona responsione firmatur.*

Title vii. at the beginning, *sicut lectio manifestat.* For this use of *lectio* Gothofred has collated parallels from the 4th century. See his Commentary on *l.* 3, *Th. C., de respons. prud.*

Title vii. 5. The construction of *scire* with *quia* in Title vii. at the beginning, *Scitote iurisconsulti quia Moyses prius hoc dixit* is found in the Church writers of the 4th century, *e.g.*, Rufinus Aquil. Comm. in Symbol., at the commencement: *Sententia sapientum quae probe admodum dicit quia de Deo etiam uere dicere periculosum est.* His preface to the *Sexti Sententiae* begins *Scio quia sicut grex ad uocem proprii pastoris libenter accurrit ita et religiosus auditor uernaculi doctoris admonitionibus gaudet.*

Plagiator, instead of *plagiarius*, is found in Tertullian and Jerome. 1. *Adver. Marcion*, 23: *Talis assertor (serui) etiam damnaretur in saeculo, nedum plagiator.* Cp. 5, *n.* 3: *Magistrum autem pueri tui, de quo dignatus es scribere (quem plagiatorem eius esse non dubium est).*

[2] Haenel's edition *Th. C., ad leg., Jul. de Adult.* ix., 7, 6, p. 846.

[3] *Th. C.*, i. 1, 5, *De Constitutionibus Principum et Edictis.*

[4] *Jena Literarische Zeitung*, 1843, p. 719, quoted by Huschke in *Ztschr. f. Gesch. R.W.*, vol. xiii., p. 2.

He denies the existence of any resemblance between Theodosius' project and the plan of the Collatio. Besides, the project of compiling the Imperial Constitutions and extracts from the writings of the Jurists might have occurred to some one before Theodosius the Second. As, however, only the Five Jurists named in the law of Citations are used in the Collatio, Heimbach considers it proved that the work was compiled after 426, the year of the law just referred to.

The reply to this is, that the use of the Five Jurists does not prove that the Collatio originated after 426. For the law of Citations did not create an innovation, but only validated and regularized current practice. It did not confer on the writings of the Five Jurists a fresh authority; but merely confirmed the authority which they already possessed. The recognition, therefore, of the Five Jurists affords no ground for assigning to the Collatio a later date than that of the Law of Citations. The precision with which the sources of the excerpts are given, indicates if anything, an earlier rather than a later date.

Huschke thinks that the Collatio should be dated soon after 390, the year of the Constitution quoted in Title V., chap. 3. The novelty of that constitution would explain its inclusion in a work which only quotes from Codes and the writings of the Jurists. This date would account for the exceptional omission of the Consulship in the subscription to that Constitution, and would also explain the absence from Title VI. of Lev. xx. 21, prohibiting marriage with a brother's wife and of its parallels in Roman Law.[1]

The last argument is apparently not quite convincing, for the harmony between the Mosaic Law and the Roman Constitution is not complete. The Constitutions forbid successive marriages with two sisters even after the death of the first. But marriage with a deceased wife's sister is permitted by the Biblical Law. Again, those Constitutions absolutely forbid marriage with a brother's wife. Such a marriage is in the Pentateuch only prohibited during the brother's lifetime. Should he die without issue, a surviving brother is enjoined to marry the widow. Furthermore, among the imprecations at the end of Title VI., the curse against intercourse with a brother's wife is included. But, nevertheless, Huschke is right in pointing out that the

[1] *De incest. nuptiis* (Just. Cod. v. 5, *l.* 5), without subscription and of uncertain but, presumably, later date than 390, and the Constitution (Theod. Code, *de incest. nuptiis* iii. 12, *l.* 4) dated 415, which also prohibits such marriages.

Collatio would have included those two Constitutions if it had been written at a later date.

It is quite clear that the Compiler of the Collatio did not know the Theodosian Code. This can be demonstrated from the Collatio itself. As soon as that Code appeared, it became one of the principal sources of Roman Law, and would not have been ignored by anyone who aimed at a comprehensive compilation. But the Collatio only quotes the Five Jurists and the Gregorian and Hermogenian Codes. He indeed, mentions the *Leges Novae*,[1] but only twice, and then in a fashion which indicates that he regarded them as sporadic productions, not as having been systematically collected in a Code.

In neither case is the Theodosian Code treated as an independent source of Law like the Jurists' writings or the Hermogenian and Gregorian Collections of Rescripts. The New Constitutions are quoted or referred to as giving the Compiler's views or confirming them.

The phrase *item Theodosius*, formerly accepted as evidence that the author knew the Theodosian Code, is an interpolation[2] by a later copyist, who only knew the compilations, sought all constitutions after Constantine in the Theodosian Code, and felt impelled to add the reference in the Collatio.

All doubt on this head is removed when we note that the single Constitution found in both works is given more fully in the Collatio (v. 3) than in the Theodosian Code from which it professes to be taken. Even if we assumed with Gothofred that someone had shortened it in the latter, still this will not account for the difference in the subscriptions. In the Theodosian Code the subscription reads *p.p. in foro Traiani* VIII. *Id. August Valentiniano* A.IV. *et Neotherio Coss.*; in the Collatio, *Prop. pridie Id. Maias Romae in atrio Minervae.* Obviously, two editions of the same Constitution, published at different times and in different places, had been used in the Collatio and the Theodosian Code respectively. Again, if we consider the care and accuracy with which the Compiler always gives the date of the Constitutions he cites (cp. Title VI., chap. 6), the exceptional omission of the Consulship in the subscription of the Valentinian Constitution is only

[1] Title v., chap. 3. Title xiv., chap. 3, § 6.

[2] Haenel, *l. c.*, p. 846, thinks that the original reading was *Item* or *Idem* Theodosius, which was afterwards altered by a copyist into *Item* Theodosianus.

explicable on the assumption that the Constitutions had just appeared.

So far for the *terminus ad quem*. The *terminus a quo* must remain indefinite.

The Constitution in Title V. may show that the Collatio was issued not merely just after 390, the date of that Constitution, but after 394, the year of Theodosius' victory over Eugenius. This would explain the introductory remark, *mentem legis Moysi imperatoris Theodosii constitutio ad plenum secuta cognoscitur*. Though the Constitution was promulgated by the three Emperors named at its beginning, the Compiler might well have ascribed it to Theodosius alone, for Valentinian had died in 392, Eugenius had been beaten, and Theodosius was sole Emperor of East and West.

The fact that Theodosius is styled *Imperator* and not *Divus* does not even prove that the Collatio was compiled during that Emperor's lifetime, for, in another place too (VI. 4. 1), the Compiler mentions deceased Emperors, Diocletian and Maximian, under the title *Imperatores*, without the qualifying adjective *diui*.

The final conclusion is that the Collatio was composed certainly before 438, and after 390, possibly after 394. The last is the year of the victory of Theodosius over Eugenius; the first, that of the Theodosian Code which the Compiler did not know. The exclusive use of the Five Jurists does not prove that the work was written after 426, when the Law of Citations was promulgated; for that law merely legalised existing practice.

The place of origin is uncertain. Huschke assumes that the Collatio was composed in the East. He bases his view on the hypothesis that the Gregorian Code originated in the West, and that the Collatio exhibits a preference for the Hermogenian, which, according to Huschke, was the companion code for the East. He further contends that the Introduction to the Constitution in Title V., chap. 3, shows that the Compiler recognised Theodosius, Emperor of the Eastern half of the Empire, as his Emperor.

Both hypotheses are unproved; the data are capable of other interpretations.[1] That the Pentateuch is quoted in Latin rather than in Greek and that the extant Manuscripts hail from Italy are strong evidence in favour of the view that the Collatio was composed in that country.

[1] On the use of the Hermogenian and the Gregorian Code see Essay on the Plan of the Collatio, p. xxxvii.

AUTHORSHIP OF THE COLLATIO.

THE Author of the Collatio, it is agreed by nearly all critics, was a Christian.[1] Freher[2] indeed suggests that the Compiler might have been a Jew, who wished to dissipate the prejudice against his people and faith by showing that the Mosaic and Roman Laws were not so far apart, and that in fact the latter was derived from the former. He, however, dismisses the suggestion, and assumes that the Compiler was a Christian monk.[3] This is not probable, as before St. Benedict, there were few monks in the West, and their culture was not high.[4] That he was, however, in Holy Orders may be inferred from his knowledge of Scripture and the use of the phrase *Scitote jurisconsulti*,[5] a form of address not usually employed by a secular lawyer towards colleagues, but suitable in the mouth of an ecclesiastic addressing laymen.[6]

Among the French Scholars of the sixteenth century the

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[1] Blume, *Proleg.* to his edition of the Collatio, v., note 1. Pithou in his note on Title xv., chap. 3, *s. v. de terroribus*, assumes that the author was a Christian, and notes his fidelity in reproducing a Constitution against the Manichaeans (Tit. xiv., chap. 3, § 2), which contrasts the older Roman Creed with new and strange views, and is thus a reflection, not only on the Manichaeans, but also on the Christians.

Ménage, *Juris Civilis Amoenitates*, p. 16 (1664 edition), says: *Christianum fuisse ait Cujacius, Observatt. lib.* vii., *cap.* 2, *sed nullo addito argumento. Idem ait et Bertrandus in ejus uita: probatque quod Collationem Legum Mosaicarum et Romanarum scripsit.*

[2] Freher (*Parerg.* i. 9): *Possit aliquis existimare Judaeum fuisse, qui cum laborare sectam suam uideret inuidia, quod disciplinâ iureque a Romanis diuerso uti nosceretur, ut Cornelius Tacitus alicubi ait, Mosaicas leges, quibus Judaei utantur, caeterorum imperiorum legibus plane esse contrarias, ita ut profana sint Israelitis, quae ceteris gentibus sacra, ut Juvenal Satyra* xiv.:

> *"Romanas autem soliti contemnere leges.*
> *Judaicum ediscunt et seruant ac metuunt ius*
> *Tradidit arcano quodcunque uolumine Moyses"*

amoli eam inuidiam studens demonstrauerit non usque adeo multum legibus Judaicis et Romanis disconuenire atque adeo ex patriis suis legibus sibique ueluti per manus a parentibus traditis fluxisse Romanas.

[3] Freher *Parerg.*, i. 9: *Ego quidem plane existimo, monachi alicuius ante Iustiniani tempora eum laborem esse; qui in Bibliothecis uiderim, a Graecis et iam hominibus similes illi compilationes legumque diuinarum cum Caesario collationes.*

[4] Blume *Proleg. l. c.*, p. ix.

[5] Collat., Tit. vii. 1, 1.

[6] Too much stress should not be laid upon this argument. *Scitote jurisconsulti* may be equivalent to *Sciendum est* (Tit. xiv., chap. 3, § 6). The phrase may be an imitation of the form of apostrophising their communities used by the Apostles, and which found its way into current use owing to the translation of the New Testament (H. E. Dirksen's *Hinterlassene Schriften*, ii., p. 127).

Collatio was attributed to Licinius Rufinus. Pithou, in the Prefatory note to his Edition, reports this as the view of Jean Dutillet, Bishop of St. Brieuc, and afterwards of Meaux. Pithou adds that he does not know whether Dutillet's view was conjectural or based on the authority of a Manuscript.[1] In any case, the Compiler of the Collatio, who quotes a Law of Theodosius the Great (v. 3), could not be the Licinius Rufinus who was a contemporary of Paulus.[2]

Charondas[3] accepts the name Licinius Rufinus. So does Cujas, and assumes that it belonged to a Christian author.[4]

In a letter to Pierre Pithou, dated October 17th, 1570 (M.S. Dupuy, Paris, 700), he asks for a loan of Licinius.[5] In his acknowledgment of the receipt of the manuscript, he says that he had instituted inquiries in three separate places for a second copy; and in a letter dated January 20th, 1571, he writes that he would very much like to see the original manuscript of the excellent Rufinus.[5] The name Licinius Rufinus appears again in his writings, once in a letter dated February 15th, 1573; three times in the Observations, 1573, 1585, 1595. He also, however, calls the work *Lex Dei* and *Collatio Legis Judaicae*. Thus, in a letter dated April 11th, 1573, he expresses his regret that he has not yet seen a printed copy of the *Lex Dei*; and in 1579 he uses the title, *Collatio Legis Judaicae*. When, however, in 1586, he published the Collatio together with the Theodosian Code, he studiously avoided the name Licinius Rufinus.

And yet after his death, his authority was appealed to by John Bertrand[6] for Licinius Rufinus as the author. Marquard Freher published in 1594 at Frankfurt the Lectures on Paulus' *Quaestiones*, which Cujas delivered in 1588, and reports him as having said that a Manuscript of the Collatio in a certain

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[1] *Ac memini Jo. Tilium...narrare solitum, habuisse aliquando se eius operis fragmenta pauca quibus ille Licinii Rufini nomen tribuebat, an ex coniectura, an potius ex ueteris libri fide non satis scio.* (Pithou's first note.)

[2] *Ibid. Non esse Licinii Rufini cuius nomine ad Julium Paulum in libris nostris consultatio inscripta est.* [According to the Florentine Index, Licinius Rufinus was the author of Rules, in 12 books. This is clearly a mistake, as an extract from the 13th book is given in the Digest xlii. 1, *l.* 34. His date is fixed by an extract from Paulus' *Quaestiones*, book xii., in which his question to Paulus and the latter's answer are given.]

[3] Preface dated Paris, 1572, to his edition of the Digest, published at Antwerp, 1575.

[4] *Fuere etiam Christiani, Licinnius Rufus et Aurelius Arcadius Charisius. Obss.* vii. 2, of the year 1564.

[5] See, for original quotations, p. xvi. note 2, in Essay I.

[6] See note 1, to p. 1 of this Essay, and also Blume, *Proleg.*, *l.* c., p. 5, note 1, who quotes Bertrand's statement that the author was Licinius Rufinus, and, accordingly, a Christian.

library in Germany bore on the title-page the name Licinius Rufinus.[1] The only known German Manuscript, the Salzburg-Vienna Codex, does not contain the words Licinius Rufinus. Hence Blume dismisses the report as an idle tale, taking his stand on the fact that had Cujas known of the existence of such a manuscript, we should have had an exact description of it. Moreover, Cujas himself indicates that he was uncertain as to the name of the author.[2]

Still, it ought not to be forgotten that the ascription to Licinius Rufinus rests not on the authority of Freher's Report of Cujas' Lectures but on that of Dutillet, Cujas, Casaubon,[3] and other scholars. The name appeared on the title page of the Geneva edition of 1586, and the Lyons edition of 1593.[4]

Notwithstanding these authorities, Gille Ménage and Anton Schulting, in the seventeenth and eighteenth centuries, have rejected the authorship of Licinius Rufinus, and have contented themselves with the negative result that nothing can be ascertained as to who was the author of the Collatio.

In our own days the name has been revived. Huschke attributes the Collatio to the Father of the Church, Rufinus of Aquileia. Huschke assumes, as already noted, that the Collatio was composed in the Eastern half of the Empire, and that its purpose was to point out to the Roman Jurists, who regarded other systems with contempt and hostility, that there was no antagonism between the Roman Jurisprudence and the Mosaic Legislation, and that the latter had indeed anticipated the former in several points.

The author must accordingly have been a Churchman, equally conversant with the Pentateuch and the writings of the Jurists. He must have composed the work after 390, as he incorporates in it a Constitution of that year. There must have been hostility between him and Jerome to account for his not taking his Scriptural quotations from the Vulgate. He must have been

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[1] *Is uero L. Rufinus qui contulit leges dei cum legibus populi Romani fuit enim Christianus et illa Collatio, quae non ita dudum edita est a Petro Pithoeo, habet in quadam bibliotheca Germaniae praefixum nomen Licinii Rufini.* Quoted by Blume, *Proleg.* vi., note 2.

[2] By his calling the work *Lex Dei*, etc., and by avoidance of the name of the author in his edition of the Collatio. If he refers to the work as Rufinus, it is for the sake of brevity.

[3] In his notes to Spartian (*see* Blume, vii., note 6).

[4] The title is given as follows: *Licinii Ruffini Collatio legum judaicarum et Romanarum* (Blume, *l. c.*, p. xii.).

tolerant, for he cites a constitution of Diocletian against the Manichaeans, containing strictures against other sects also, and yet adds no word of censure on the persecuting Emperor.

The life and activities of Rufinus answer to these criteria. Born at Concordia, near Aquileia, he went to Alexandria in 371, stayed there six years, and was then a presbyter in Jerusalem, 377—397. He had a dispute with Jerome, which was composed. He afterwards returned first to Rome and then to Aquileia, where he prepared translations from the Greek, among them that of Origen's περὶ ἀρχῶν, which aroused Jerome's hostility afresh. He died in 410, the year of the Gothic King Alaric's flight. These data, in Huschke's opinion, justify his identification with the author of the Collatio.

Contact during his stay at Jerusalem with the jurists of the neighbouring Roman Law School of Berytus, and knowledge of their sentiments with regard to foreign systems of Jurisprudence may have impelled Rufinus to write a comparison of Roman and Mosaic Law to show the Roman lawyers that Moses had laid the foundations on which, later on, the Romans built their wise laws.[1] His training and tastes fitted him for such a task. He was not an original writer. His works are mostly translations, and these include the Ethics of a heathen—the *Sententiae Sexti Pythagorici*. His Latin version of Origen kept him occupied with the Pentateuch, from which he cites texts not according to Jerome's Vulgate. And only a Church Father who was sufficiently liberal-minded to translate the "Sentences of Pythagoras" would have faithfully quoted Diocletian's "Constitution concerning the Manichaeans" (Title XIV., chap. 3, § 2) without adding a condemnation of that Emperor's exhortations to adhere to the old faith.

Huschke himself anticipates three objections to his theory. First, there were at the time many distinguished Churchmen called Rufinus.[2] To this the reply is that only the Church Father was known as an author. Secondly, the Collatio is not mentioned in the list of the works of the Church Father. The list, however, is incomplete.[3] The Collatio, being only a compilation, might have escaped notice, especially as it came

[1] Introduction to the Collatio in Huschke's Edition of Ante-Justinian Jurisprudence, p. 646.

[2] Fontanini, *Histor. litter. Aquilensis, Libri* v., *Rom.* 1742. Books iv. and v. deal exclusively with Rufinus; on p. 412, six men of this name are mentioned who were distinguished in the Church.

[3] Fontanini, *l. c.*, pp. 341 and 412.

to be of interest to the jurist rather than to the theologian. Thirdly, all his writings have prefaces, while the Collatio has none. But this is only the case with Rufinus' larger books. Moreover, in course of time, an apology against heathendom would no longer have been necessary. The preface which may have indicated such a purpose would have lost its point. Hence the preface has not been preserved.

Huschke's theory rests on the assumption that Jean Dutillet did not fix upon the name Rufinus arbitrarily, but found it in some manuscript,[1] and added Licinius, the name of a famous jurist, in order to indicate by the combination the dual character of the work. False ascriptions were, indeed, not uncommon in the Middle Ages. But this hypothesis destroys the force of the entire argument drawn from the fact that the name Rufinus is attributed to the work, for this name, too, may be fictitious. The dissimilarity of the language of the Biblical texts in the Collatio and the Vulgate does not help Huschke's view as to the authorship. For the quotations from the Pentateuch in Rufinus' acknowledged writings show no correspondence with the texts in the Collatio. Cp. Deuteronomy xviii. 10, 11 in the Collatio and the same text in Rufinus.[2] The strongest argument against Huschke's view is that the traditions of the manuscript belong to the West and not to the East. And it is incomprehensible that a work of Rufinus, whose views brought him into conflict with Jerome, should have been accepted as authoritative,[3] and that at the same time its authorship should have been forgotten.

Rudorff suggests that the author of the Collatio was St. Ambrose, Bishop of Milan. The following are his grounds. At the end of the thirteenth, or beginning of the fourteenth,

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[1] The phrase attributed to Cujas by Freher: *Habet in quadam Bibliotheca Germaniae prefixum nomen*, might thus be true.

[2] Collat. xv. 1, § 1, 2. *Non inueniatur in te . . . diuinus apud quem sortes tollas, nec consentias uenenariis inpostoribus, qui dicunt, quid conceptum habeat mulier, quoniam fabulae seductoriae sunt. Nec intendas prodigia, nec interroges mortuos. Non inueniatur in te augurator nec inspector auium nec maleficus aut incantator nec Pitonem (= Pythonem) habens in uentrem nec aruspex, nec interrogator (mortuorum nec portenta inspiciens.)* Rufinus, Homil. Origen xvi. on Numbers, § 7. *Non inueniatur in te . . . diuinans diuinatione neque sortiens sortibus, neque maleficus neque incantator neque uentriloquus neque portentorum inspector neque interrogans mortuos.*

[3] As is shown by Hincmar's quotations from it. See Essay I., at the beginning, and quotations from the Collatio in Appendix to an Epitome of Alaric's Breviary, Cod. St. Gall. No. 722, printed in Haenel's *Lex Visigothorum*, p. 455. Cp. Rudorff, *l.c.*, p. 293 and notes.

century, the Nestorian Metropolitan of Nisibis and Armenia, Ebediesus of Soba, put together a collection of Synodal Resolutions.[1] The work consists of nine parts. In the introduction to the third part, which deals with Intestate Succession, the writer gives a historical survey of the subject. After a reference to the Œcumenical Councils at Nicæa in 325, and at Constantinople in 381, there occurs a passage rendered by Assemani as follows: *Sequiori adhuc aeuo alias adiecit leges Ambrosius Mediolanensis episcopus, ab imperatore Valentiniano iussus scribere statuta et ordines iudiciorum praefectis locorum. Ex Christianis praeterea principibus leges et iura scripsere Constantinus ille magnus, Theodosius et Leo idque, sicut nobis traditum est in occidente praestitere.* A closer translation by Roediger is given below.[2]

Rudorff's contention is that the Collection of Statutes and Ordinances which Ambrose was asked to write is the Collatio. The date of the Collatio, now accepted, is consistent with his theory. For the work would then have been published after the Œcumenical Council of Constantinople and before the Laws of Constantine and Leo, which belong to the last quarter of the fifth century. These Laws, moreover, begin with the topic of Intestate Succession with which the Collatio ends, and they

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[1] Translated from the Syriac into Latin by Alois Assemani, according to two Vatican Manuscripts. *Ebediesu Decisio iurum ecclesiasticorum in Assemani's bibliotheca orientalis* III., i., p. 267. Angelo Mai, in the 10th volume of his Scriptores, repeated the task, using a third manuscript which Assemani had given up as lost. *Ebediesu Metropolitae Sobae et Armeniae collectio canonum synodicorum ex Chaldaeis bibliothecae Vaticanae codicibus sumpta et in Latinam linguam translata ab Aloysio Assemano. Praeceāit epitome canonum apostolicorum auctore eodem Ebēdiesu* in the *Scriptorum ueterum noua collectio.* Tom. x. *Romae*, 1838.

[2] Roediger's translation is attested by Noeldeke as accurate (Mommsen, *l. c.*, pp. 129 and 130, note 2). *Composuit deinde (leges) post hos Ambrosius, episcopus Mediolanensium, quum a Valentino* [read *Valentiniano*] *rege iussus esset ut scriberet et in ordinem redigeret iura* [Syriac, *dinē*, usually meaning *iudicia* or *statuta*] *et ordines* [Syriac *teksē* = τάξεις] *praefectis* [Syriac, *higēmuni* = ἡγεμόσι] *regionum* [Syriac, *athrawāthā*]. *Et ex regibus Christianis etiam scripserunt iura* [Syriac, *Dinē*] *et decreta* [Syriac, *pesakē, decisiones*] *Constantinus ille magnus et Theodosius et Leo. Et haec quidem ut comperimus in terra occidentis.* Assemani remarks in reference to this account (*Biblia Orientalia*, iii. p. 269): *Undenam id hauserit Sobensis incertum. Leges quae Valentiniani nomen praeferunt non alia uidentur ratione Ambrosio tributae quam quod ei aequales fuerunt et aliqua negotia iussu Valentiniani Ambrosium suscepisse ex historia ecclesiastica compertum est.* Rudorff contends that Ebēdiesu was too thorough a scholar to be thrust aside lightly. His writings received canonical authority in the Nestorian Church; and though the Nestorians, since the close of the 5th century, separated themselves from the Byzantine Church, and repudiated the later legislation of the Eastern half of the Roman Empire, still, on this very account, they would be better instructed in the older sources, which they accepted as binding. Ebediesu's report ought, therefore, not to be rejected because its source is remote.

contain a mixture of Roman and Mosaic Law like the Collatio, which they seem to have used.[1]

If the Collatio is the work referred to by Ebediesu, Ambrosius could well have been its author, for he was Master of the Mosaic Law, the *ius ciuile* and the Constitutions, the three elements composing the Collatio.[2]

Indeed, the Roman sources, to which the Collatio limits itself, correspond to Ambrosius' education and career. Gaius' Institutes, the *pars de iudiciis* from Ulpian's Commentary on the Edict and Papinian's Responses, belong to the three years' course in the Roman Law Faculty. The two collections of Rescripts and the few *Extravagantes* of the later Constitutional Jurisprudence, the Citations from Paul's *Sententiae* and Ulpian's *de Officio Proconsulis*, fit in with Ambrose's special studies and his practical juristic and administrative career. The language in the six passages of the Collatio, where the compiler himself speaks, is free from rhetorical flourishes, as one would expect from Ambrose. The peculiar use of *Quia*, instead of *Quod*, is found in the writings of the Bishop.[3]

That Theodosius is named without fulsome titles, confirms the hypothesis that the Collatio proceeded from Ambrose, who addressed the Emperor simply as Tua Clementia, without adding the titles of exaggerated homage current in that age.[4] The Biblical quotations in the Collatio and those used by Ambrose are taken from the same source.[5] Finally the place of origin of the Manuscripts should be borne in mind. All the three Codices are of North-Italian origin. One of them is still at Vercelli, and this place is within the see of Milan.

But even the theory attributing the Collatio to Ambrose, notwithstanding its attractiveness, presents many difficulties.

The Collatio mentions Theodosius as sole Emperor (v. 3, 1). It must, therefore, have been composed not earlier than 394.

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[1] The First Article: Where there are no sons, daughters succeed, as in Num. xxvii. 1-8, and Collatio xvi. 1. Agnates are preferred to cognates. Women in the third degree are to be excluded. Here the Roman element in the Collatio is incorporated. The penalties for theft, house-breaking and cattle-raiding (Arts. 77, 81, 82), and for culpa in deposit (Art. 127) are identical with the terms of the Collatio (vii. 1, 1-2; vii. 4, 1; x. 3, 1; xi. 7).

[2] This is proved by the letter to Paternus in 395, in which the prohibition of marriage with a sister's daughter is explained according to the three systems of law.

[3] *Ambros.* Ep. 21, note 7, *Omitto quia iam ipse populus iudicauit: omitto quia cum quem habet, de patre Clementiae tuae postulauit. Taceo quia pater pietatis tuae quietem futuram spopondit si electus susciperet sacerdotium.*

[4] See previous note.

[5] Cp. Mommsen, *l. c.*, p. 130, note 3, and references in Appendix to Rudorff, *l. c.*

It is improbable that a work composed twenty years after Valentinian's death in 375 should have been written at the instance of that Emperor. Rudorff's view that the Collatio is to be connected with the co-operation between Church and State, and was intended to reassure Christian judges[1] who had qualms of conscience about the lawfulness of administering Roman Law, has no basis in Ebediesu's Report. *Pesaké* and *Diné*, *statuta et ordines*, to be sent to the Governors of the Provinces, do not correspond with the contents of the Collatio, a work of less technical character, and probably intended to serve as an introduction to the study of Roman Law.

The Collatio is too elementary to have proceeded from the pen of St. Ambrose, equally eminent as a bishop and a statesman. The compiler was probably an obscure clerical official practising in the Bishop's Court,[2] who was possibly also a teacher of Roman Law. His name, hitherto undiscovered, will, in all likelihood, always remain unknown.

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[1] Cp. Ambros, *Ep. ad Studicum*, lib. vii., Ep. 58, where the bishop explains to Studicus, a state official, that he is justified in pronouncing a sentence of death, but it is praiseworthy to withdraw from the Church.

[2] See Muirhead, Roman Law, p. 357, "The Bishop's Court had its origin in the practice of the primitive Christians, in accordance with the Apostolic precept, of submitting their differences to one or two of their brethren in the faith, usually a presbyter or bishop, who acted as arbiter. On the establishment of Christianity the practice obtained legislative sanction." See Muirhead, *ibid*. On the Functions and Jurisdiction of this Court. Of course the Collatio, much of which deals with crimes against private individuals, was not intended for practical use in the Bishop's Court, which had no criminal jurisdiction.

FACSIMILE OF THE BERLIN MANUSCRIPT AND TRANSCRIPT.

INCIP LEX DIQUA[illegible]

kp̄ .xcii. Moyses dis[illegible]

Siquis percusserit hominem ferro & occiderit reum
morte morietur. Si autem in manu lapidem
quo mori possit percusserit & mortuus fuerit ho
micida est mortem morietur. Si uero pugnis
uel inimicitie impulerit eum uel inmiserit super eum aliquo
duas gratia insidias & mortuus fuerit uel per iram per
cusserit eum manum & mortuus fuerit mortem
morietur. . . . kp̄ .xciii

Paulus quoque libro quinto sententiarum subarru
lo ad legem cornelia de sicariis & ueneficis dicit
lege cornelia poenam deportationis infligi eum qui
hominem occiderit eiusque rei causam furandi
occidendi causa habuerit ut occiderit parauerit
falsum ut testimonium diceret quo quis periret
mortisue causam praestiterit qui omnes scelere
re inhonestiores poene capitis uindicem placuit
humiliores uero aut in metallum damnantur aut
bestiis subiciuntur. kp̄ .xciiii. Ul pianus libro

Officio proconsulis subarrulo de sicariis &
ueneficis capite primum legis cornelie
de sicariis cauetur ut hi qui praeter iudicis ue
quaestionis causa ab eo obtinuerit quaestio

INCIP LEX DĪ QUAM DS̄ PRECEPIT AD [MOYSEN].

K$\bar{p}$ DXCII. Moyses dī sacerdos hac dicit.

Si quis ꝑcusserit hominem ferro & occiderit eum mortem moriatur. sin autem manu lapidem quo mori possit ꝑcusserit & mortuus fuerit homicida est mortem moriatur. Si autē ꝑ inimicitiā inpulerit eum uel inmiserit sup eum aliquo duas ex insidiis & mortuus fuerit uel ꝑ iram per cusserit eum manum & mortuus fuerit mortem moriatur . . . . K$\bar{p}$ DXCIII.

Paulus quoque libro quinto sententiarum sub titulo ad legem corneliā de sicariis et beneficis dicit. lex cornelia poenam deportationis infigit ei qui hominem occiderit eiusque rei causam furtiue faciendi cum telo fuerit, & qui uenenum hominis necandi causa habuerit uendiderit parauerit falsum ue testimonium dixerit quo quis perisset mortis suę causam prestiterit que omnia facinora in honestiores poena capitis uindicari placuit humiliores uero aut in crucem tolluntur aut bestiis subiciuntur, k$\bar{p}$ DXCIIII: ULPIANUS LIBRO VII.

De officio proconsulis sub titulo de sicariis & ueneficis capite primum legis cornelię de sicariis cauetur ut his pretor iudex uę questionis cui sortem obuenerit questio

Square brackets indicate words obliterated and supplied from the Editions.

Line.

1. *Abbreviation of* Dei *is indicated by a horizontal line above word. Similarly for* Deus *or* Dominus.
3. Hac, *read* haec (*W.*).*
5. sin :— si (*V. W.*).
7. mortem moriatur: *V. has* morte *throughout.*
10. manum, *read* manu (*V.*).
13. beneficis = ueneficis.
15. causam, *read* causa.
18. perisset, *read* periret (*V. W.*).
24. primum, *read* primo.
25. his = is.

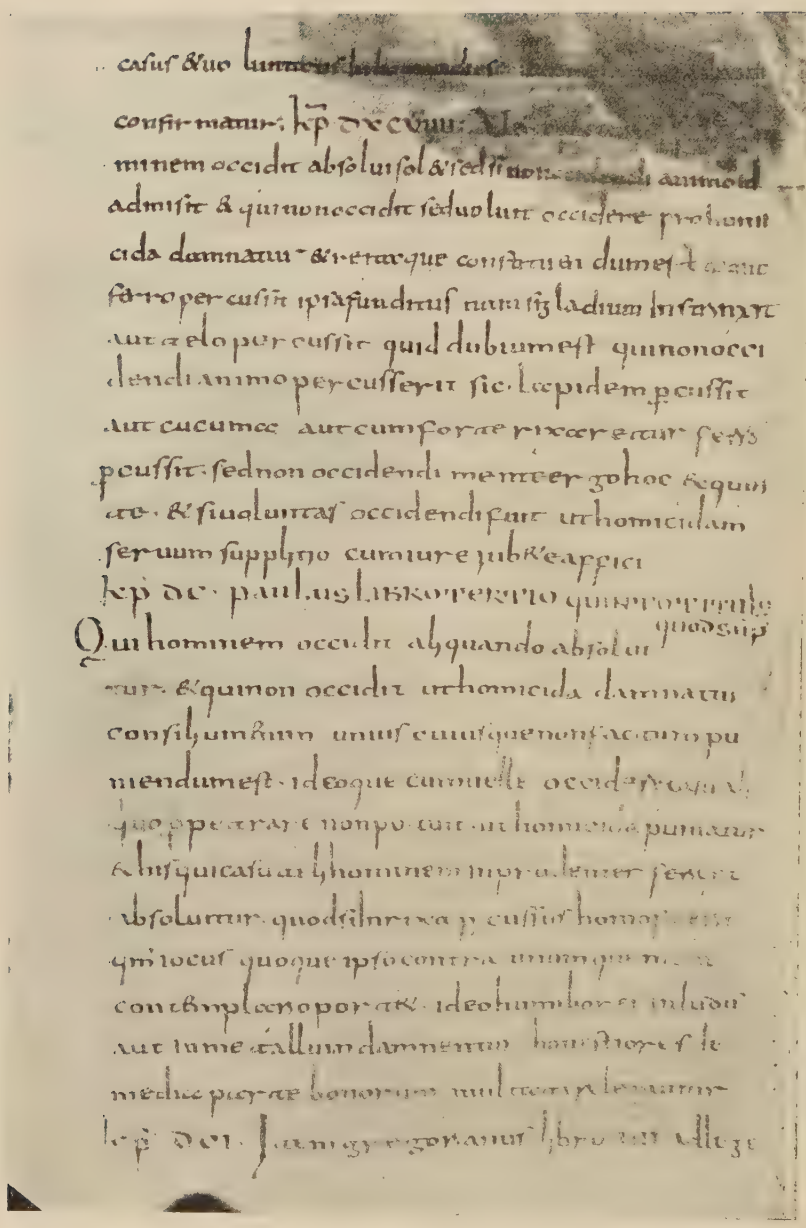
* *W refers to the Readings in the Vienna Codex.*
V ,, ,, ,, ,, *Vercelli Codex.*
M ,, ,, ,, ,, *Mommsen's Text*

[illegible] proprius mille pas.
[illegible] cum iudicibus cuius
[illegible] deceptrix eius quicu
[illegible] homini necandi fur aue faciendi causa homine uel occiderit cuius idolum
[illegible] reliqua. kp̄ dxcv.
Qui dicit uerbis legi modo ipsi loquitur. Ulpianus
[illegible] non omnem qui cum telo ambulauerit
punit. sed eum tantum qui homini necandi fur
aue faciendi causa telum gerit coercet conpescit.
Item eum qui hominē occidit coercet necat ecit
cuius condicionis hominem uel adseruum &
peregrinum patrem ue iste hec ex iudicatur.
kp̄ dxcvi. Item paulus libro quod supra &
Aristo dicit homicida est qui aliquo genere telum
hominem occidit mortisue causam praestitit.
kp̄ dxcvii. Item de causa libus homicidis mox
ser lex adicit. si autem non inimicitiae inimi
cerit supeum aliquo duas non insidiatus uel
lapidem quo moritur non pro dolum. Et ceciderit
supeum moriturus fuerit. Si autem inimicus eius
neque quaesierit male facere ei iudicabitur inim-
eum quippe cuius. Et proximum mortuum secundū
iudicia hae liberabitur percussorem. kp̄ dxcviii
Ulpianus libro Et aristo qui supra relatorio distinctione

[de sicariis eius] quod in urbe roma propriis mille pas
sus factus sit. utique erat cum iudicibus cui ei.
ex legem sortem obuenerint de capite eius qui cū
telo ambulauerit hominis necandi furtiuę fa
ciendi causa hominē uę occiderit cuius id dolum
malo factum fuerit & reliqua. Kp̄ dxcv.
Relatis uerbis legi modo ipsi loquitur. Ulpianus
hec lex non omnem qui cum telo ambulauerit
punit. sed eum tantum qui hominis necandi fur
tiuę faciendi causā telum gerit coerci conpesci,
item eum qui hominē occidit coercit nec aiecit
cuius conditionis hominem ut & ad seruum &
peregrinum ptinet ire hec lex uideatur.
Kp̄ dxcvi: Item paulus libro quod supra &
titulo dicit homicida est qui aliquo genere teli
hominem occidit mortis suę causam prestitit.
Kp̄ dxcvii. Item de causalibus homicidis moy
ses legaliter dicit. si autem non p inimicicias inmi
serit sup eum aliquod uas non insidiant uel
lapidem quo moriatur non p dolum. & ceciderit
sup eum mortuus fuerit. Si autem inimicus eius
neque quesierit malefacere ei iudicabitis inter
eum qui pcussit & proximum mortui secundū
iudicia hec & liberabitis percussorem. Kp̄ dxcviii
Ulpianus libro & titulo qui supra relato distinctionē

Line.
1. propriis, *read* propiusue *(Schulting)*
2. factus, *read* factum. utique erat, *read* uti quaerat; *for* cui *read* qui.
3. legem, *read* lege; sortem, *read* sorte.
5. dolum, *read* dolo.
7. lege, *read* legis. ipsi, *read* ipse.
8. hec = haec.
10. causā, *read* causa; coerci, *read* coercet; conpesci, *read* conpescit.

Line.
11. aiecit, *read* adiecit.
13. pertinet ire, *read* pertinere.
14. quod, *read* qui.
16. mortis suę, *read* mortisue.
17. causalibus, *read* casualibus.
19. insidiant, *read* insidianter *or* insidians.
21. Si autem inimicus eius, *read* Si autem non inimicus eius fuerit.
25. relato, *read* relati.



casus &uo lumaco[illegible]

confir-matur: hēp dcccvii: Ale[illegible]

minem occidit absolui sol & redit[illegible] aumo id

admisit & qui non occidit seduolunt occidere prohomi

cida damnatu- & retroque conferri dumest & qui

ferro percussit ipsa fundit[illegible] nam si gladium insanx

aut zelo percussit quid dubium est qui non occi

dendi animo percusserit sic. lapidem p cussit

aut cucumee aut cum fortae rixaret aut fenes

pcussit: sednon occidendi mente gohoc &quan

are. & si aliud intras occidendi fuit ut homicidam

seruum supplicio cum iure subtr appici

hēp de. paulus labeo refert quinon putat

Qui hominem occidit aliquando absolui quodsup

erius. & qui non occidit ut homicida damnatu

consilium & non unius cuiusque non facinus pu

niendum est. ideoque cum uelit occidere casu a

quo peccatur & non potuit ut homicida punatur

& si quis casu ut hominem imperatorem feriret

absolutur. quod si ut rixa p cussit homi[illegible]

qm' locus quoque ipso contra animum [illegible]

contemplatione portat. ideo humbor[illegible] iuuen

aut iume callum damnemur. hanc hoc[illegible]

medice piorae bonorum multorum [illegible]

hēp dcl. Jam igr egotamur libro [illegible]

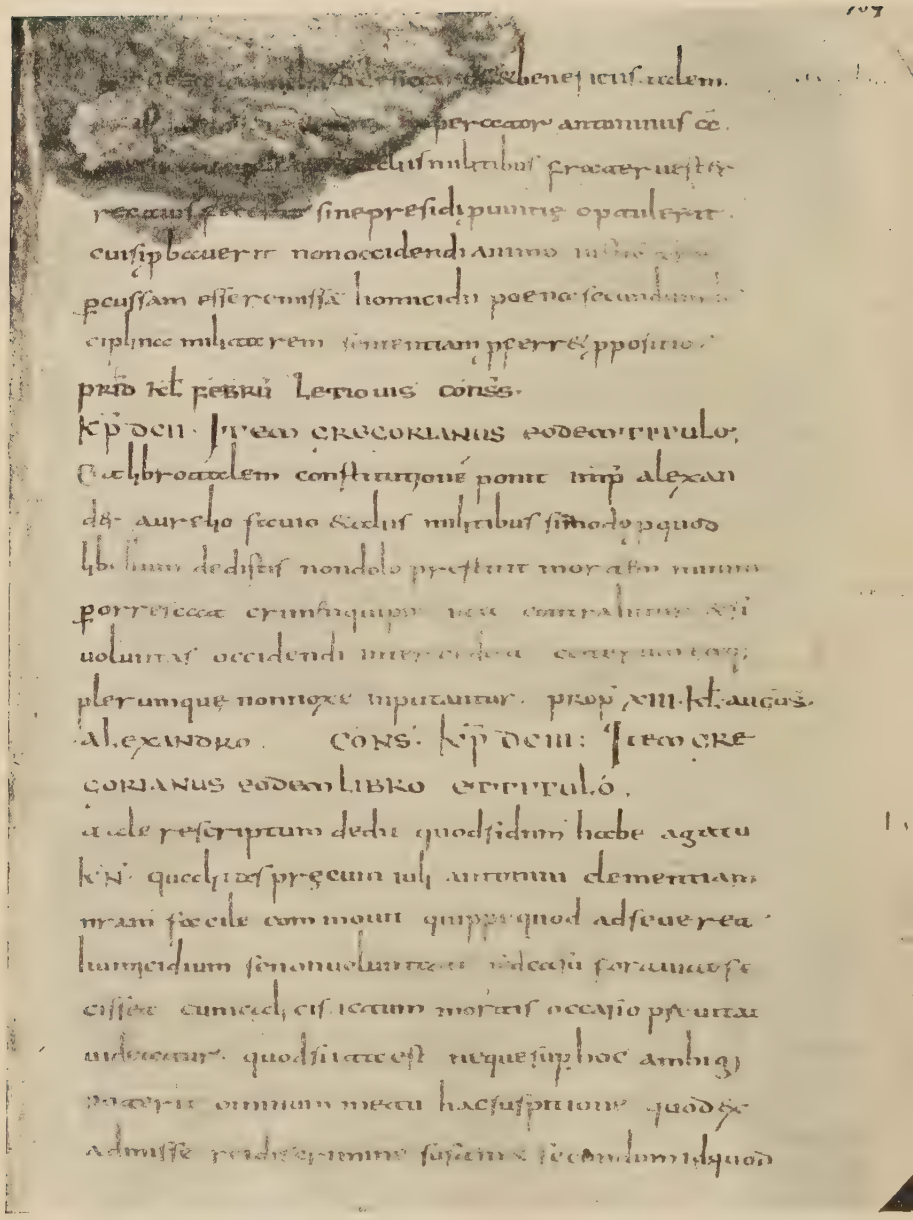
casus & uolun[tatis In homicidio seruari rescripto Hadriani]
confirmatur; K$\bar{p}$ dxcviii: [Uerba rescripti et qui ho]
minem occidit absolui solet sed si non oc[ci]de[n]di animo id
admisit et qui non occidit sed uoluit occidere pro homi
cida damnatur et re itaque constituendum est ex quo
ferro percussit ipsa funditus nam si gladium instrinxit
aut telo percussit quid dubium est qui non occi
dendi animo percusserit sic, lapidem pcussit
aut cucuma aut cum forte rixaretur ferro
pcussit. sed non occidendi mente ergo hoc exquiri
te, et si uoluntas occidendi fuit ut homicidam
seruum supplitio cum iure iubete affici.
K$\bar{p}$ dc. paulus LIBRO TERTIO QUINTO TITULO quod sup
Qui hominem occidit aliquando absolui
tur. et qui non occidit ut homicid$\bar{a}$ damnatur
consilium enim unius cuiusque non factum pu
niendum est. ideoque cum uelle occidere casu ali
quo ppetrare non potuit. ut homicida puniatur
et his qui casu teli hominem inprudenter ferierit
absoluitur. quod si In rixa pcussus homo fuerit
$\overline{qm}$ iocus quoque ipso contra unumquemque
contemplari oportet, ideo humiliores in ludū
aut in metallum damnentur honestiores de
media parte bonorum multati relegantur
K$\bar{p}$ dcı. Item Gregorianus libro ıı. ad lege

Line.

5. et re, *read* e re (*Edd.*). ex quo, *read* ecquo (*M.*).
6. ipsa funditus, *read* Epafroditus (*Blume*).
7. qui non, *read* quin.
8. sic lapidem, *read* si claue (*Digest*).
12. supplitio *read* supplicio.
12. cum iure, *read* summo (*M.*).
13. libro tertio quinto titulo quod, *M. reads* libro et titulo qui.
15. homicidā, *read* homicida.
17. cum uelle, *read* si cum uellet (*V.*, *W.*).

Line.

18. puniatur, *read* punitur.
19. his = is. *After* casu *supply* iactu (*Paulus*).
20. fuerit, *read* perierit (*Paulus*).
21. $\overline{qm}$ = quoniam. iocus, *read* ictus (*Digest*). ipso, *read* ipsos.
23. damnentur, *read* damnantur.
23 *and* 24. de media parte, *read* dimidia parte (*V.*).
25. lege, *read* legem.

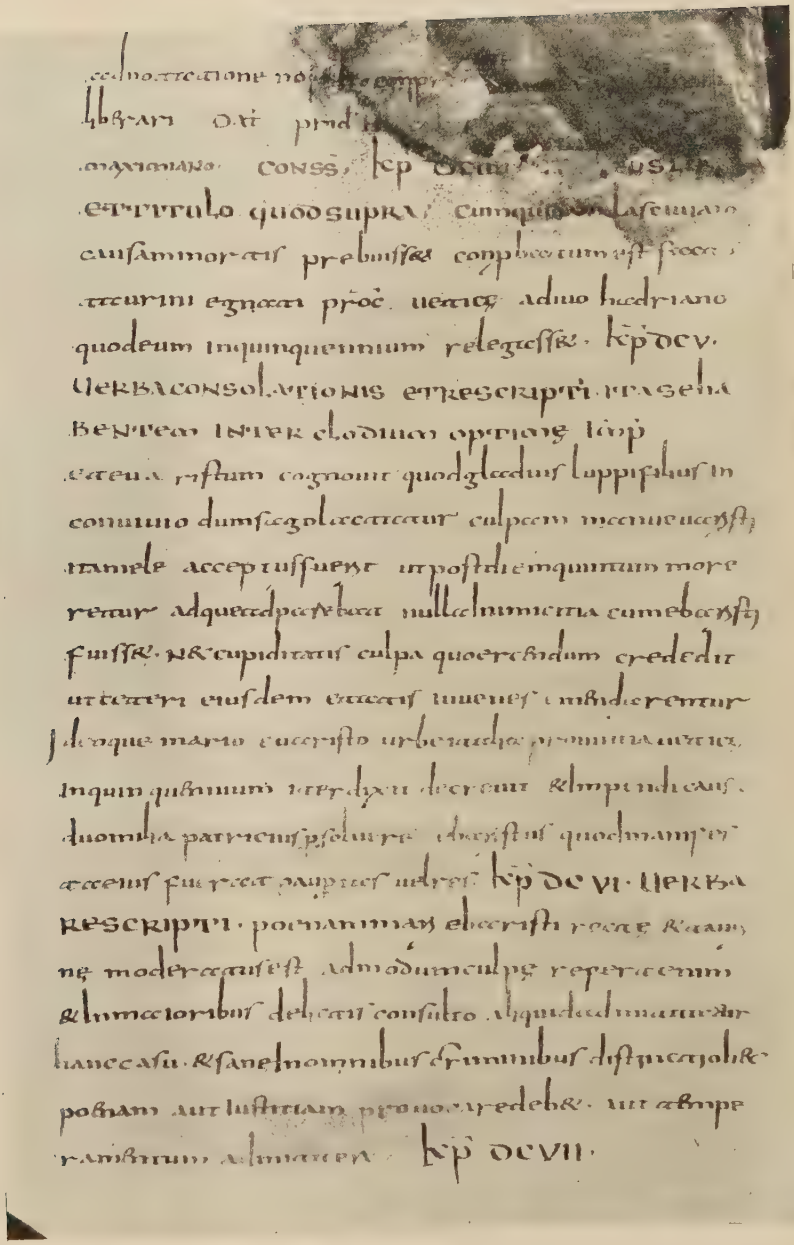


— 5 —

[c]ornelia corneliam de sicariis] et beneficiis talem
[constitutionem ponit] imperator antoninus ā
[aurelio herculano et] aliis militibus frater uester
rectius fecerit si ne presidi ꝑuintię optulerit
cui si ꝑbauerit non occidendi animo iustā a re
ꝑcussam esse remissā homicidii poena secundum dis
ciplinā militarem sententiam ꝑferret ꝑpositio.
prid kł FEBRŪ LETIO UIS CONSS.
Kp̄ dcii · ITEM GREGORIANUS EODEM TITULO,
et libro talem constitutionē ponit imp alexan
der aurelio fauio et aliis militibus si modo ꝑ quod
libellum dedistis non dolo prestitit mortem minime
ꝑrescat crimen quippe ita contrahitur et si
uoluntas occidendi intercedat ceterum ęaq;
plerumquę non noxę inputantur. PROP XIII kł AUGUS
ALEXANDRO, CONS; Kp̄ DCIII; ITEM GRE
GORIANUS EODEM LIBRO ET TITULO.
tale rescriptum dedit quod si dn̄m habe agatu
KN̄ qualitas prȩcum iuli antonini clementiam
nr̄am facile commouit quippe quod adseueret
humicidium se non uoluntate sed casu fortuito fe
cisset cum calicis ictum mortis occasio preuitat
uideatur. quod si ita est neque sup hoc ambigi
poterit omnium metu hac suspitione quod ex
admisse rei discrimine sustinet secundum idquod

Line.
1. *Omit first* cornelia *as superfluous.* beneficiis = ueneficis.
3. herculano, *reported by Mommsen as* Herculario *in the MSS.*
4. si ne, *read* si se (*Just.*).
7. proferret, *read* proferet (*Just.*). propositio, *read* proposita.
8. Letio = laeto. uis = bis.
11. *After* Alexander *supply* A. (Augustus). fauio = Flauio. quod *read* quo.

Line.
13. porrescat=perhorrescat, et si, *read* si et.
15. *Supply before* plerumquę: ex improuiso casu potius quam fraude accidunt fato (*V.*, *W.*).
18. habe = aue. agatu = agatho.
19. KN̄ = Karissime Nobis.
20. nr̄am = nostram.
22. calicis *read* calcis. ictum, *read* ictu. preuitat *read* praebita,
24. omnium metu, *read* omni eum metu.
25. admisse = admissae.



— 6 —

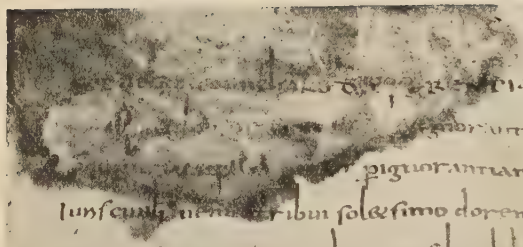
adnotatione nos[tra] compre[hensum uolumus]
liberari: dāt prīd kl̄ [Decemb. Diocletiano Aug iiii et]
maximiano CONSS. Kp̄ dciii [ULPIAN]US LIB[RO]
eT TITULO QUOD SUPRA: cum quidam lasciuiam
causam mortis prebuisset conp̣batum est factū
taurini egnati proc̄: ueticę a diuo hadriano
quod eum in quinquennium relegasset. Kp̄ dcv.
UERBA CONSOLATIONIS ET RESCRIPTI ITA SE HA
BENTEM INTER CLODIUM OPTIME IMP̄:
et euaristum cognouit quod gladius luppi filius in
conuiuio dum sago iactatur culpam manu euaristi
ita mele acceptus fuerit ut post diem quintum more
retur adque adparebat nulla inimicitia cum ebaristi
fuisset. nec cupiditatis culpā quoercendum crededit
ut ceteri eiusdem etatis iuuenes emendarentur
Ideoque mario euaristo urbe italia prouintia ueticep
in quinquennium iterdixit decreuit, et impendi causa
duo milia patri eius p̣solueret ebaristus quod manifes
ta eius fuerat̄ pauptas uel res. Kp̄ dcvi UERBA
RESCRIPTI, poenam Mari ebaristi rectę et tauri
nę moderatus est admodum culpę refert enim
et in maioribus delictis consulto aliquid admittatur
hanc casu, et sanę in omnibus criminibus distinctio hec
poenam aut iustitiam prouocare debet. aut tempe
ramentum admittere. Kp̄ dcvii.

Line.

4. quod, *read* qui. *Before* lasciuiam *insert* per.
6. ueticę = Baeticae.
8. consolationis, *read* consultationis.
8 *and* 9, habentem, *read* habent.
9. Clodium = Claudium. optimę = optime.
10. *For* cognouit *read* cognoui; *for* gladius, Claudius; *for* luppi, Lupi.
11. culpam, *read* culpa. manu, *read* Mari.
12. mele, *read* male.
13. adque = atque.
13 *and* 14. nulla inimicitia cum ebaristi fuisset, *read* nullam inimicitiam cum euaristo ei fuisse.
14. nec··· crededit, *M. reads* tamen cupiditatis culpa coercedum credidi (*perhaps it should read* nec minus cupiditatis . . culpam coercendam credidi . .).

Line.

17. iterdixit, *read* interdixi; decreuit, *read* et decreui; et (*before* impendi), *read* ut.
18. ebaristus = Euaristus.
19. uel res. *Huschke, following Pithou, reads* uelis rescribere, *M., however, thinks that in the Archetype* V R *stood as abbreviation for* Uerba Rescripti, *that the full form was afterwards inserted and that the copyist read the retained* V. R. *as* uel res, *which makes no sense.*
20. et, *omit.*
21. est, *read* es; admodum *to be read as two words.*
23. hanc, *read* an.
24. iustitiam, *read* iustam (*Digest*).



…TIARIUM SEXTO
…norum bus generalis
…pignorantium delinquentib
…lus causa nec … ribus solacium dorem pacato quis
…nomus ignor… quisquis consilio delinquentibus pres
…ens non sola… pignus quod necessarium est addat adfirma
…tionem consideret an rem scienter adignorante alie
…quo quid gestum apponatur & reliqua. Sep DCVIII.

Paulus libro et titulo quo supra;

qui aetatem aut rendae falsi causa agere non … non … hominis occidendi causa portare … aut non appella
tionem nominum ferrum continuat sed omnem
quod nocendi causa portatum est.

EXPLIC: TITVS DESICARIUS
ET HOMICIDIS CASUELIO
LVNTATE: INCIPEATROCI
Sep DCVIII: MOYSES DICIT; INTURIA
Si autem contenderint duo uiri & percusserit alter
alterum lapide aut pugno & non fuerit mortuus de
cubuerit autem in lectulo. Si surrexerit & ambulauerit
homo foras in baculo suo et innocens erit ille qui eum
percussit. Verumtamen operas eius cessare eum faciet & impen

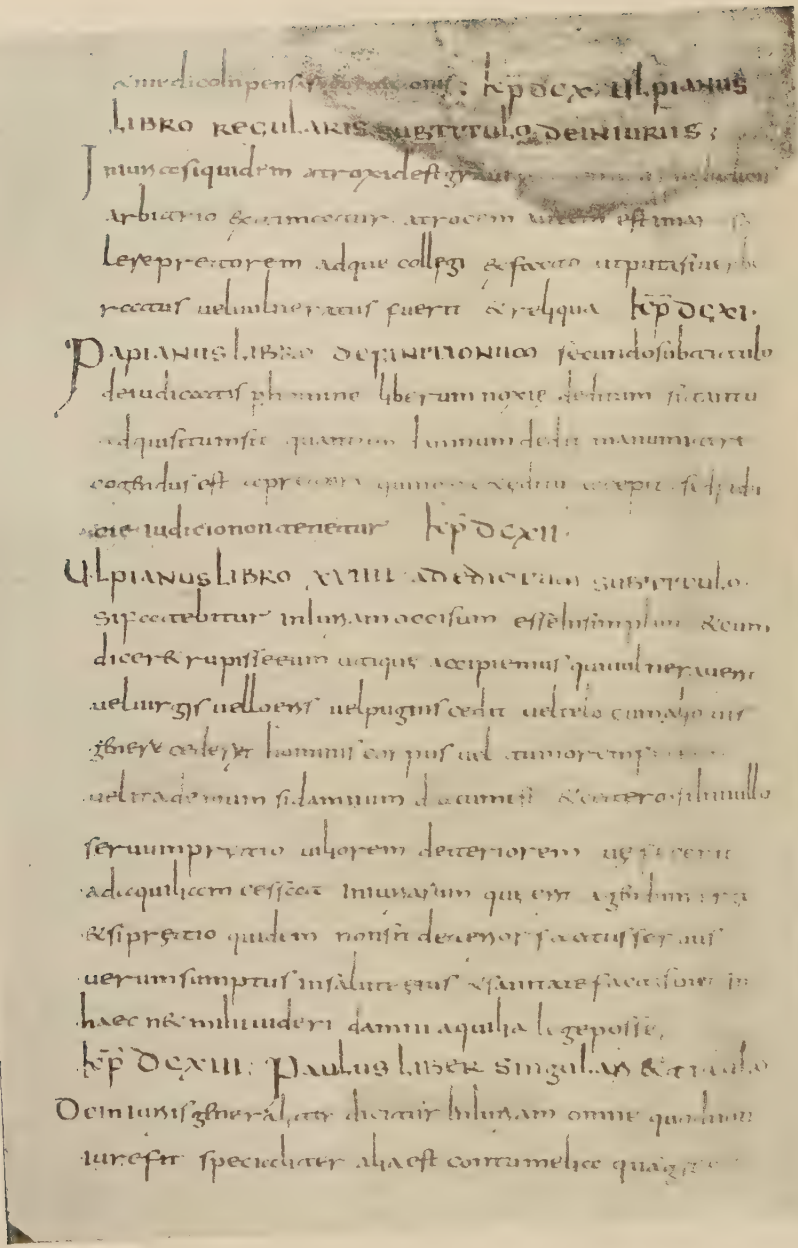
[modestinus libro diff]erentiarum sexto
[sub titulo de scientibus et i]gnorantibus generalit
[loquitur nonnunquam] ꝑignorantiam delinquentib,
iuris ciuili uenia tribui solet si modo rem pacto quis
non iuris ignoret qui scilicet consilio delinquentibus pres
tari non solet ꝓpter quod necessarium est addita distinc
tionem considerare utrum sciente ad ignorante ali
quo quid gestum ꝓponatur et reliqua. Kp̄ dcviii.

PAULUS LIBRO ET TITULO QUOD SUPRA:
qui telum tutandę salutis causa ageret non uideatur
hominis occidendi causa portare. teli autem appella
tionem non tantum ferrum continetur. sed omnem
quod nocendi causa portatum est.

EXPLIC : TITULUS DE SICARIIS
ET HOMICIDIS CASU UEL UO
LUNTATE : | INCIP DE ATROCI

Kp̄ dcviii: Moyses dicit: [INTURIA] Ex. ꝛ21.18
Si autem contenderint duo uiri et ꝑcusserit alter
alterum lapide aut pugno et non fuerit mortuus de
cubuerit autem in lectulo. et si surgens ambulauerit
homo fortis in baculo sine crimine erit ille qui eum
ꝑcusserat preter acessionis eius mercedem dabit ea

Line.
1. *First part is obliterated, seems to be* cornelia cornelia, *Cp. p. 5 first part, line* 1.
4. ciuili, *last* s *obliterated.* pacto, *read* facti.
5. qui, *read* quae.
6 *and* 7. distinctionem, *read* distinctione.
7. ad *read* an.
9. quod, *read* qui.
10. ageret, *read* gerit; *for* uideatur, uidetur.
11 *and* 12. appellationem, *read* appellatione.
12. omnem, *read* omne.
17. inturia, *read* iniuria. *Observe in Codex marginal reference to Scriptural text by a much later hand.*
22. fortis, *read* foris (*Pithou according to Septuagint*).
23. eą, *read* ei.

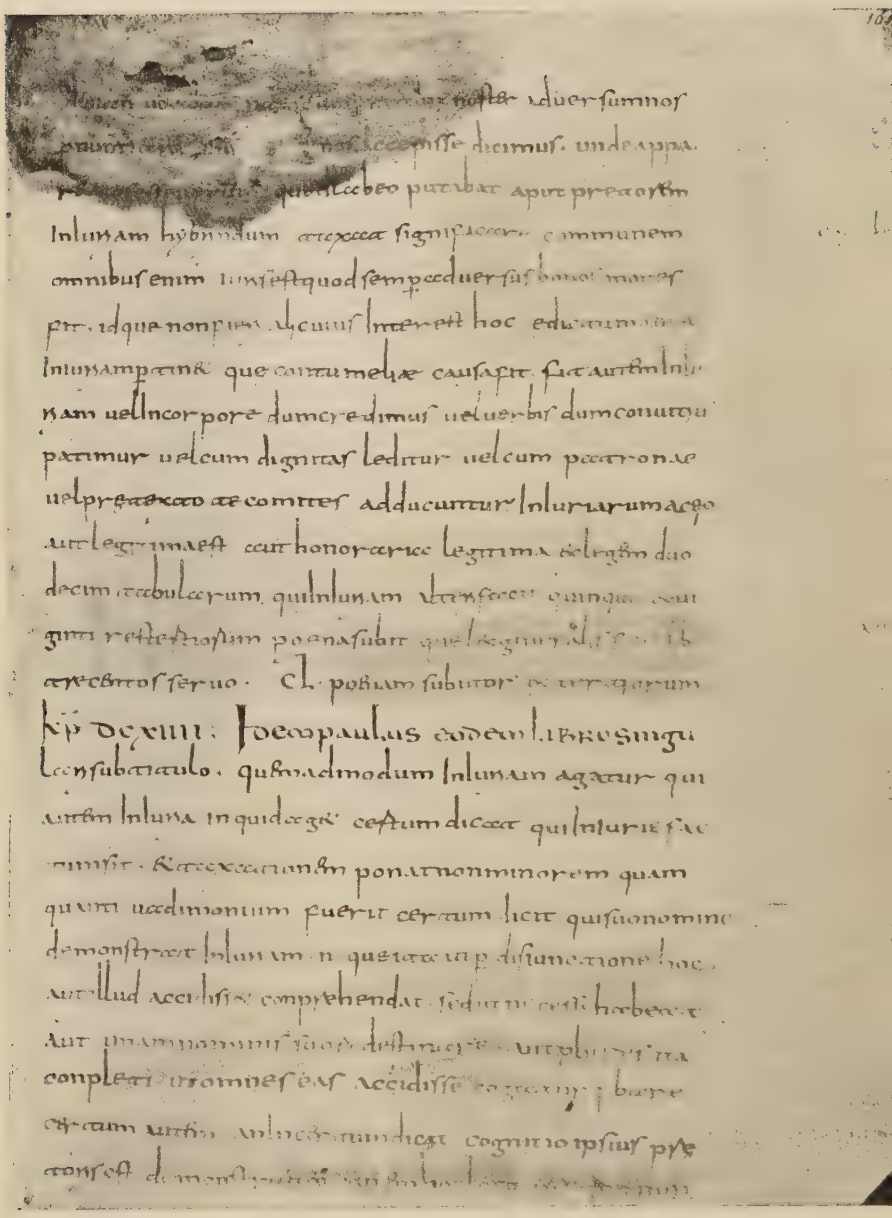


… medicolinpens… : ℔ DCX. Ulpianus
libro regularis subtitulo de iniuriis;
Iniuria est quidem omne … quod
arbitrio & animo contra … fit ut … lex pretorem atque collegi & … quae
iniuriae uel iniuriosa fuerit & reliqua ℔ DCXI.
Papianus libro de adulteriis secundo sub titulo
de iudicatis ph… Liberum noxiae dedi… si cum
adquisierunt quamuis … eadem … coactus est … quae … iudicio non teneantur ℔ DCXII.
Ulpianus libro xlviii ad edictum sub titulo
si quis … inuriam occisum esse hominem … cum
dicer… rupisse eum utique accipiemus quamuis non uen…
uel ut gr… uel oleum … uel pugnis cecidit uel uis … aut
gener… … hominis … pus … tumor … …
uel tradendum … damnum … … … …
… seruum pretio uel … deteriorem … …
… adquiescere … iniuriam … … …
… pretio quidem non … deteriorem … … …
… uerum simplus … … … … …
… hanc … … … … … … …
℔ DCXIII: Paulus libro singulari … titulo
De iuris … aut dicamus iniuriam omne quodcumque
iure … speciatim … … … … …

et medico inpensas curationis. Kp̄ dcx. Ulpianus
Libro regularis sub titulo de iniuriis;
Iniuria si quidem atrox id est graui [rerum non sine iudicis]
arbitrio extimatur. atrocem autem estimare so
lere pretorem adque collegi ex facto ut puta si uerbe
ratus uel uulneratus fuerit et reliqua: Kp̄ dcxi.
Papianus Libro definitonum: secundo sub titulo
de iudicatis phominē liberum noxię deditum si tantū
adquisitum sit quantum damnum dedit manumitere
cogendus est a pretore qui noxa et ędităū accepit. sed fidu
cię iudicio non tenetur. Kp̄ dcxii.
Ulpianus Libro xviii. ad edictum sub titulo
si fatebitur iniuriam occisum esse in simplum. et cum
diceret rupisse eum utique accipiemus qui uulnerauerit
uel uirgis uel loeris uel pugnis cedit uel telo cum alio uis
genere cederet hominis corpus uel tumorem fecerit
uel ita demum si damnum datum est. et cetero si in nullo
seruum prętio uiliorem deteriorem uę fecerit
ad aquiliam cessat iniuriarumque erit agendum ergo
et si prętio quidem non sit deterior factus seruus
uerum sumptus in salute ęius et sanitate facti sunt in
haec nec mihi uideri damni aquilia lege posse.
Kp̄. dcxiii; Paulus Liber Singulari et titulo
De iniuriis generaliter dicitur iniuriam omne quod non
iure fit specialiter alia est contumelia quā grecia

Line.
2. regularis, *read* singulari.
3. graui rerum non *M. reads* graui non est,
4. extimatur = aestimatur.
5. adque = atque. collegi *or* colligi, *both in Codex*.
6. *insert* quis *before* fuerit (*V. W.*).
7. Papianus, *read* Papinianus.
8. noxię, *read* noxae.
9. damnum, *read* damni. manumitere = manumittere.
10. noxa et ędităū, *read* noxae deditum (*W.*).
13. iniuriam, *read* iniuria.

Line.
15. *for* loeris *read* loris; *for* cedit, caedit; *and for* cum, *read* quoue (Lachmann).
16. cederet *or* cederit, *read* sciderit (*Lachmann, cf. Digest*, scinderet).
17. uel, *read* sed, *and for* et cetero, ceterum.
19. ad aquiliam, *read* Aquilia.
21. salute, *read* salutem. sanitate, *read* sanitatem.
22. *before* posse, *supply* agi.
23. liber, *read* libro.
24. iniuriam, *read* iniuria.
25. grecia, *read* Graeci.



[adician uocant] nam dum pretor noster aduersum nos
[ꝑnuntiaret iniuriam] nos accepisse dicimus, unde appa
[ret nos esse uerum] quod Labeo putabat aput pretorem
iniuriam hybrin dumtaxat significare communem
omnibus enim iuris est quod sempaduersus bonos mores
fit. idque non fieri alicuius interest hoc edictum ad ea̅
iniuriam ꝑtinet quę contumeliae causa fit, fit autem iniu
riam uel in corpore dum credimus uel uerbis dum conuitiū
patimur, uel cum dignitas leditur uel cum patronae
uel pretextote comites adducuntur. Iniuriarum actio
aut legitima est aut honoraria legitima ex legem duo
decim tabularum qui iniuriam alteri facit quinque ex ui
ginti restertiorum poena subit quę lex generalis fuit libero
trecentos seruo. CL. poenam subitor extertiorum
K̄p̄ dcxiii: Idem paulus eodem libro singu
lari sub titulo quemadmodum iniuriam agatur qui
autem iniuria inquid aget certum dicat qui iniurię fac
tum sit. et taxationem ponat non minorem quam
quanti uadimonium fuerit certum dicit qui suo nomine
demonstrat iniuriam. neque ita ut ꝑdisiunctionē hoc,
aut illud accidisset conprehendat. sed ut necesse habeat
aut unam nominis suo re destinare. aut plures ita
conpleti. ut omnes eas accidisse cogatur ꝑbare
certum autem an incertum dicat cognitio ipsius prę
toris est demonstrata autem hoc loco pretor non

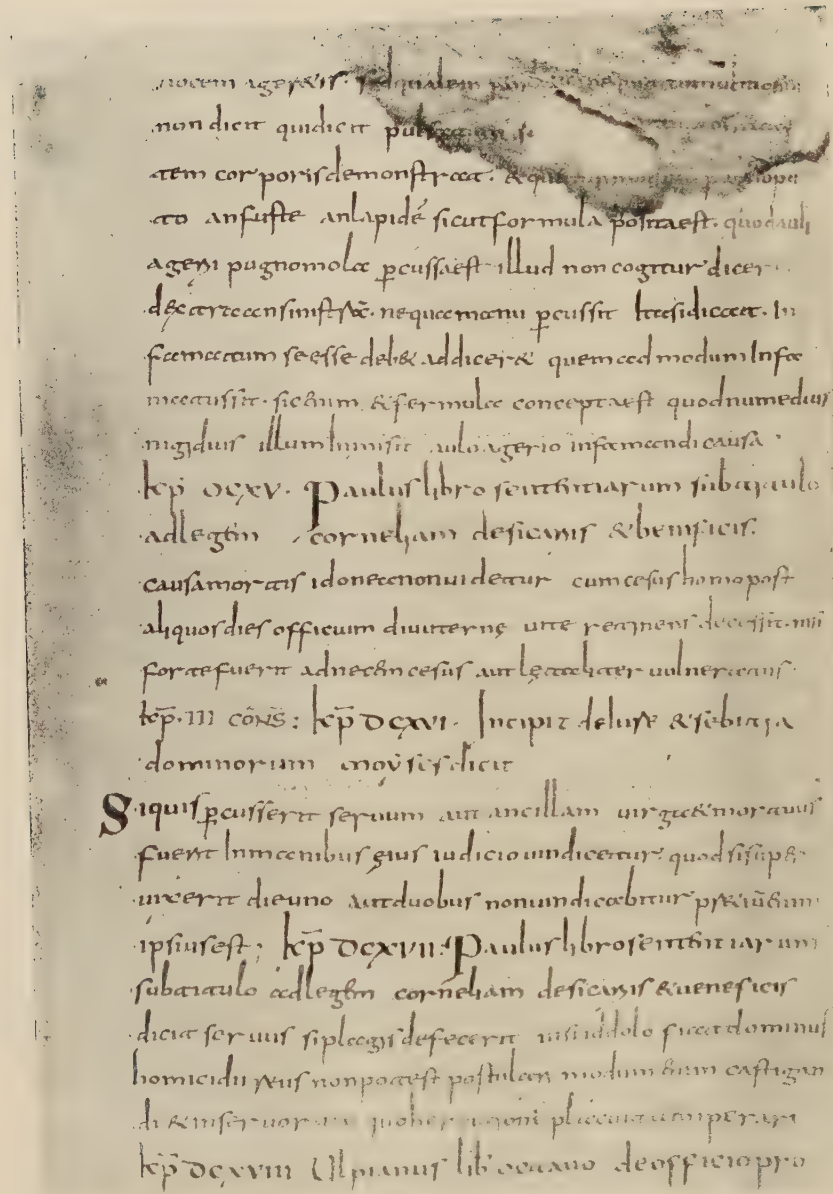
Before line 1 the following are to be supplied in the text from Justinian's Institutes (Book IV., Title IV.):—ὕβριν appellant, alia culpa, quam Graeci ἀδίκημα dicunt, sicut in lege Aquilia damnum iniuriae accipitur, alia iniquitas et iniustitia quam Graeci.

Line

1. dum, *read* cum; noster, *read* non iure *(Just.)*.
2. pnuntiaret, *read* pronuntiat.
3. nos, *should be* non.
4. hybrin, *observe Greek characters in margin.* communem, *read* commune.
5. enim iuris, *read* iniuriis *(Lachmann)*.
7 *and* 8. iniuriam, *read* iniuria.
8. credimus, *should be* caedimur *(V. W.)*.
9. uel cum, *read* ut cum *(Digest)*. patronae, *read* matronae.
10. pretextote, *read* praetextatae *(W. Blume)*; adducuntur. *read* abducuntur.
11. legem, *read* lege.
12. ex, *read* et.

Line

13. *For* restertiorum, *read* sestertiorum; *for* poena *read* poenam; *for* subit *read* subito, *and before last word of line supply:* "fuerunt et speciale uelut illa si os fregit" *(Blume)*.
14. *Before* seruo *insert* si. subitor ex tertiorum, *read* subito sestertiorum.
17. *For* iniuria *read* iniuriarum; *for* inquid, inquit; *for* aget, agit; *for* qui, quid.
21. accidisset, *read* accidisse.
22. *For* nominis *read* nomine; *for* re, rem, *and for* destinare, designare.
23. conpleti, *read* conplecti.
25. demonstrata, *read* demonstrat.



— 10 —

uocem ageretis sed qualem [formulam edat certum]
non dicit qui dicit pulsatum si [uerbe ratus sed et par]
tem corporis demonstrat et qu[em in modum pugn]o pu
to an fuste an lapidé sicut formula posita est. quod auli
agerii pugno mola pcussa est illud non cogitur diceret
dextra an sinistrā. ne qua manu pcussit ita si dicat. in
famatum se esse debet addiceret quemadmodum infa
matus sit. sic enim et fermula concepta est quod numedius
nigidius illum inmisit aulo agerio infamandi causa;
kp̄ dcxv. Paulus libro sententiarum sub titulo
ad legem corneliam de sicariis et beneficis.
causa mortis idonea non uidetur cum cesus homo post
aliquos dies officium diuiternę uitę retinens decessit. nisi
forte fuerit ad necem cesus aut lętaliter uulneratus;
kp̄ iii cons: kp̄ dcxvi. Incipit de iure et sebitia
dominorum moyses dicit,

Si quis pcusserit seruum aut ancillam uirga et mortuus
fuerit in manibus ęius iudicio uindicetur. quod si super
uixerit die uno aut duobus non uindicabitur pretiū enim
ipsius est; kp̄ dcxvii: Paulus libro sententiarum
sub titulo ad legem corneliam de sicariis et ueneficis
dicit seruus si plagis defecerit nisi id dolo fiat dominus
homicidii reus non potest postulari modum enim castigan
di et in seruorum quohercitionē placuit temperari
kp̄ dcxviii: Ulpianus lib octauo de officio pro

Line.

1 *and* 2. parts that are faint seem identical with similar parts, page 12, left hand side, Codex p. 163.

1. ageretis, *read* agentis. *After* qualem *supply* formulam edit certum (*V. W.*).

3 *and* 4. puto, *read* puta.

4. posita, *read* proposita.

5. mola, *read* mala; diceret, *read* dicere.

6. *For* ne qua *read* nec qua; *for* pcussit, percussa sit *and for* ita, item.

7. addiceret, *read* adicere.

8. *For* fermula, *read* formula; *for* numedius, *read* numerius.

Line.

9. *For* nigidius *read* negidius; *for* il lum inmisit *read* libellum misit (*M. foll owing Vonck*).

11. beneficis = ueneficis.

12. cesus = caesus.

13. *For* aliquos *read* aliquot, *and for* diuiternę, diurnae.

15. Kp̄ III, *probably intended by scribe to indicate* Titulus III. cons = constitutio, *but there is no reason for its presence.* sebitia = saeuitia.

20. *After* sententiarum, *Blume inserts* quinto.

24. quohercitione = coercitione.

Decessit dominorum quidam potestatum minis-
uos suos in hoc exercitum ejusperare necunquam hominum
lussuum de recti. sed dominorum litter est neuxelum
contrecse utrum uel secum uel mole rebile Iniurium
dene gaur. his qui siluste deprse ecatur. ideoque cognosce
de querellis illorum quse secum ligce lulis abimi ecdfte ecatuem
confugerunt. & suesdurum hebiem quem equum uellis a-
mis Inlun ecedfecto. cognouerit ubimlubis. ut impo &
accatm summonste uer. ecentur. quodsimes constitutioni
frecudhnsecerit scieme cedmissum seueriur gesecuture
kp̄ DC.xc. Dimus kiem cedneenus umbram
quendam mecatronce. nem Inquinquennium relegauit
quod & leuissimus cecuisi cenillas ceatocissime cradiat.
kp̄ DC.xci: Jum dimus pius ced luellum alfiluli
reseripsit hsecuerba esp. norum obsequium non solum
Impeno. sed & modi ecatione. & suffi cientib; pr̄guum &
lustris operibus ecommeri operatu. magis & ipse curare
debet qui se imperitiae. Quoster uacese. ut & ecclesi
requiescere. expositi. nisi ppe ecuerit. uel ipse ecte in
pendu esse. [illegible]

[consulis sub titulo de domin]orum seuitias si dominus in
[seruum saeuierit uel] ad pudiciciam turpemque uiola
tionem conpellat quę sint partes presidis ex rescrip
to diui pii ad aurelium marcianum ꝑconsole beticę
manifestatur cuius rescripti uerba. kp̄ dcxviii
Hec sunt dominorum quidem potestatem in ser
uos suos inlibatam esse oportet ne cuiquam hominum
ius suum detrahi. sed dominorum interest ne auxilium
contra seuitiam uel famem uel intolerabilé iniuriam
denegetur. his qui si iustę deprecantur. ideoque cognoscę
de querellis illorum qui ex familia Iuli sabini ad statuam
confugerunt, et siue durius habiti quam ęquum uel infa
mię iniuria adfectos cognoueris ueniri iubet. ut in potes
tatem sauini non reuertantur. quod si meę constitutioni
fraudem fecerit sciet me admissum seuerius exsecutuꝝ :
kp̄ dcxx. Diuus etiam adrianus umbram
quandam matrona, nam in quinquennium relegauit
quod ex leuissimis causis ancillas atrocissime tractare
kp̄ dcxxi : Item diuus pius ad liuellum alfi Iuli
rescripsit hec uerba seruorum obsequium non solum
imperio, sed et moderatione. et sufficientibꝫ preuitis et
iustis operibus contineri oportet itaque et ipse curare
debet justę hac temperare, et uos tractare. ut et facili
requirere eo possit nisi apparuerit uel inparente in
pendiis esse. uel atrociorem dominationem seuitiam

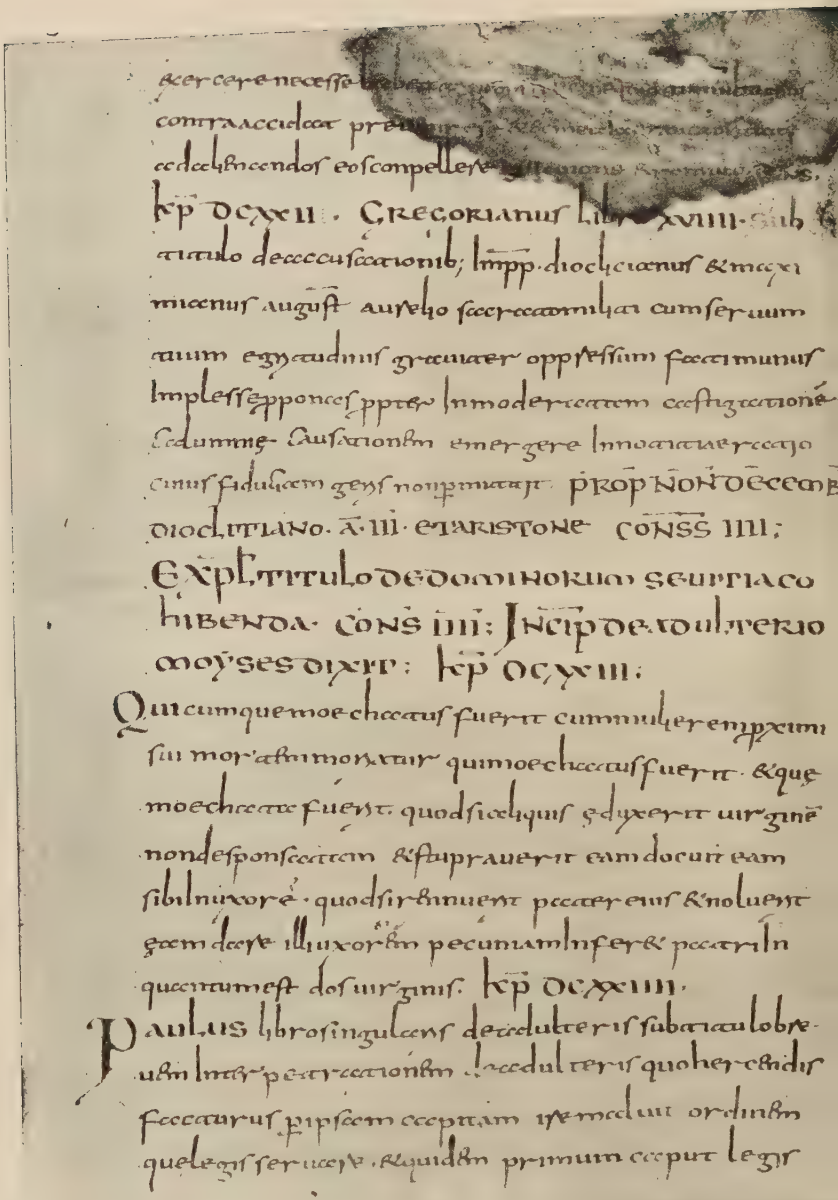
Line.

1. *The words in MS.* Iulia de adul[teriis] *do not belong here, but to folio* 163, *right hand side; instead supply as above.* seuitias, *read* saeuitia.
2. *The words* secundo uer *in MS, also belong to folio* 163, *right hand side.* pudiciciam, *read* inpudicitiam.
4. ꝑconsole. *read* proconsulem. beticę = Baeticae.
7. *for* ne cuiquam, *read* nec cuiquam.
10. qui si, *omit* si; iustę, *omit cedilla.*
11. illorum, *read* eorum. (*W. Dig.*)
12. *for* siue *read* si uel; *for* habiti, habitos; *and after* ęquum s*upply* est.

12 *and* 13. infamię, *read* infami.

Line.

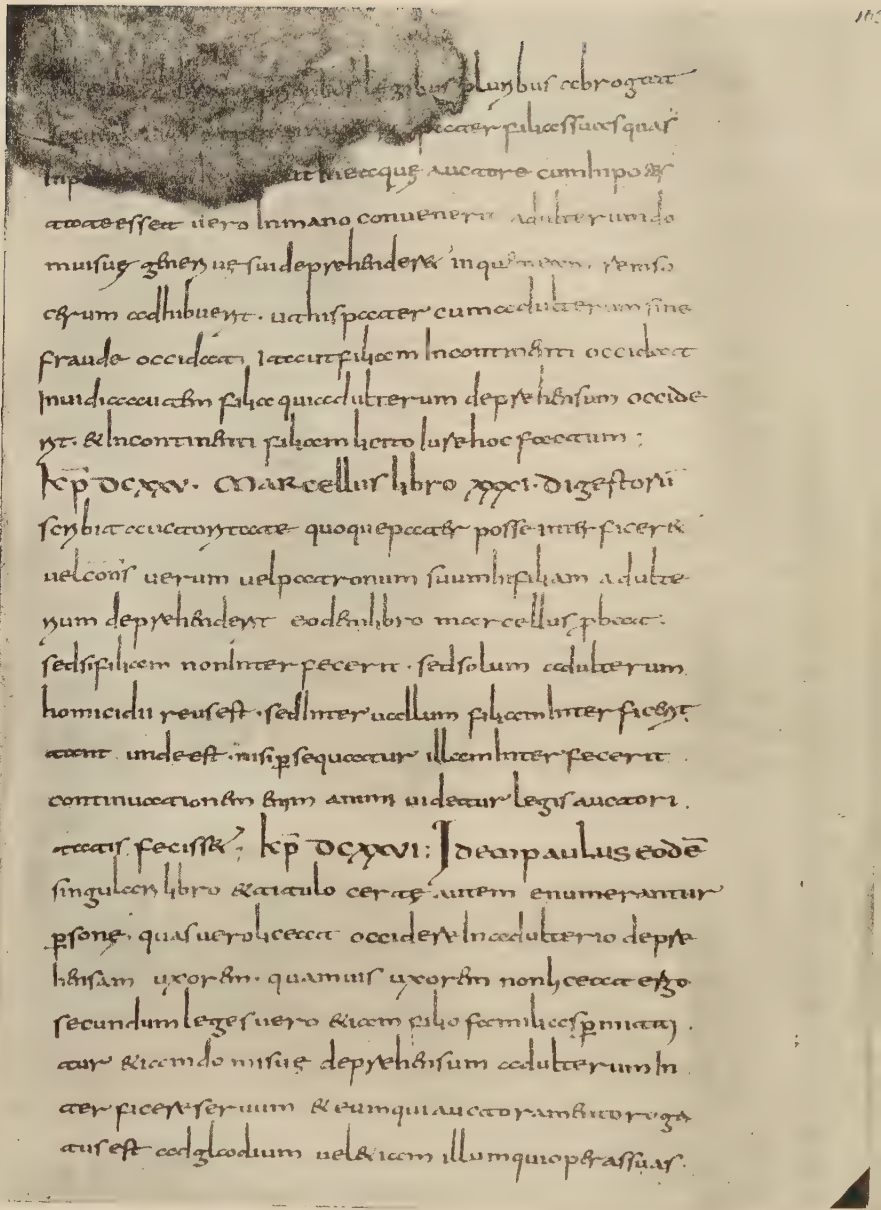
13. ueniri, *read* uenire; *and for* iubet in, iube ita ut (*Digest*).
17. matrona nam, *read* matronam.
18. tractare, *read* tractaret.
20. *Before* hec *insert* in.
21. sufficientibꝫ = sufficientibus. preuitis = praebitis.
23. *for* debet *read* debes; *for* hac temperare, ac temperate; *for* et uos, tuos (*W.*), *and for* et facili *read* ex facili (*Lachmann*).
24. *for* eo possit nisi *read* eos possis ne si (*Pithou*); *and for* inparente, in parem te (*Pithou*).
25. atrociorem……seuitiam, *read* atrociore ……saeuitia (*Lachmann*).



— 12 —

exercere necesse habeat [p consul uc ne quid] tumultuosius
contra accidat preuenire se et ex mea iam auctoritate
ad alienandos eos conpellere grauione et romulo C N S,
Kp̄ dcxxii GREGORIANUS Libro xviiii. sub
titulo de accusationib; Impp. dioclicianus et maxi
mianus augus̄t aurelio sacrato militi cum seruum
tuum egritudinis grauiter oppressum fati munus
implesse ꝓponas ꝓpter inmoderatam castigationē
calumnę causationem emergere innotitiae ratio
cuius fiduciam geris non ꝑmittit PROP NON DECEMB
DIOCLITIANO. ā III. ET ARISTONE CONSS IIII.
EXPL TITULO de dominorum seuitia co
hibenda. cons IIII. Incip de adulterio
Moyses dixit. Kp dcxxiii:
Quicumque moechatus fuerit cum mulierem ꝓximi
sui mortem moriatur qui moechatus fuerit et quę
moechata fuerit. quod si aliquis ęduxerit uirginē
non desponsatam et stuprauerit eam docuit eam
sibi in uxorē. quod si rennuerit pater eius et noluerit
ęam dare illi uxorem pecuniam inferet patri in
quantum est dos uirginis. Kp̄ dcxxiiii.
PAULUS libro singularis de adulteris sub titulo bre
uem interpetrationem de adulteris quohercendis
facturus pipsam capitam ire maluit ordinem
que legis seruare. et quidem primum caput legis

Line
2. *After* auctoritate *add* te (*Lachmann*).
3. grauione et romulo, *read* Glabrione et Homullo.
5. dioclicianus = Dioclitianus.
6. Aūgust = Augusti.
7. *After* tuum *supply* ui.
9. causationem, *read* accusationem, *and for* innotitiae, innocentiae.
11. aristone, *read* aristobulo, *and omit* IIII.
12. titulo, *read* titulus.
13. cons IIII. *Cf. page* 19, *line* 17, *where* Kp̄ *indicates* titulus.
15. mulierem, *read* muliere.
17. eduxerit, ,, seduxerit.
18. docuit, ,, dotabit (*W. following Septuagint*).
22. singularis, ,, singulari.
23. interpetrationem; *after this, Huschke adds* legis Iuliae. quohercendis = coercendis.
24. pipsam capitam *should be* per ipsa capita. maluit, *read* malui.



— 13 —

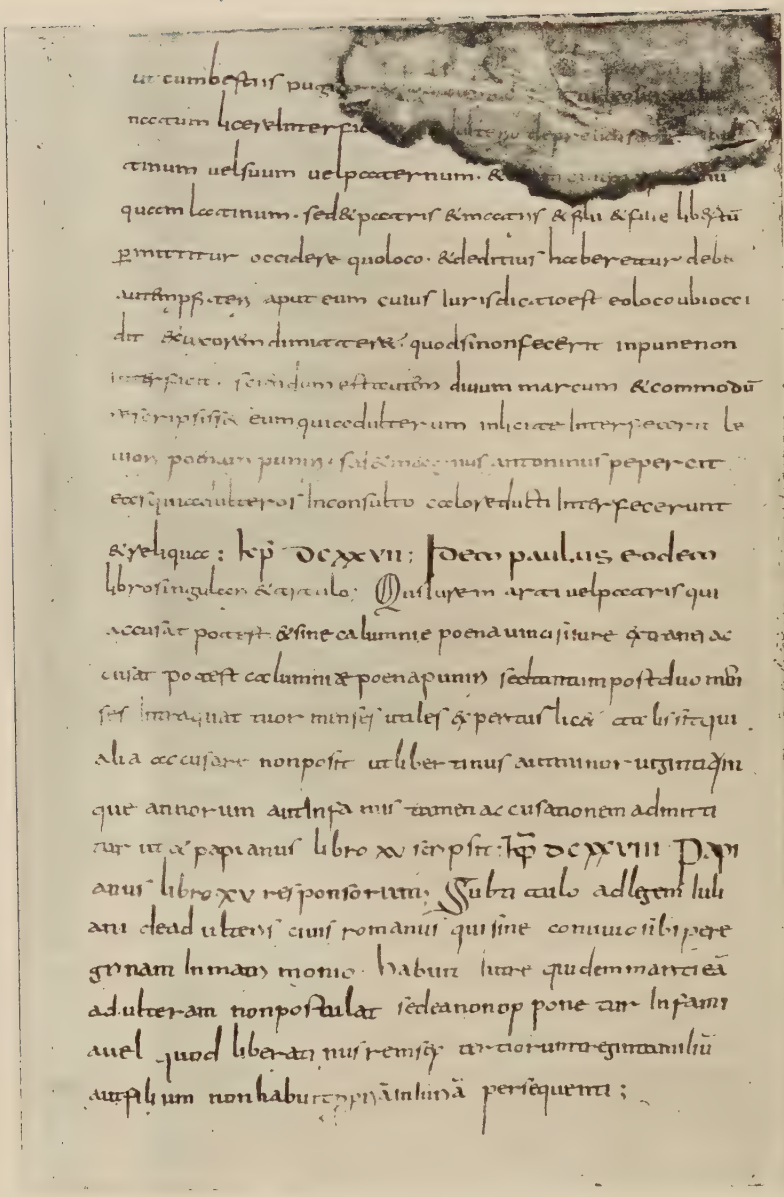
[iulię de adulteris prioribus] legibus pluribus abrogat
[secundo uero capite pmittit] pater filias suas quas
[in potestatem habet] ut in ea quę auctore cum in potes
tate esset uero in mano conuenerit adulterum do
mui suę generiue sui deprehenderet in quem eam rem so
cerum adhibuerit. ut his pater cum adulterum sine
fraude occidat ita ut filiam incontinenti occidat
inuidia autem filia qui adulterum deprehensum occide
rit. et in continenti filiam licito iure hoc factum:
K$\bar{p}$ dcxxv. maRcellus libro xxxi. digestorū
scribit auctoritate quoque pater posse interficeret
uel cons uerum uel patronum suum in filiam adulte
rium deprehenderit eodem libro marcellus ꝑbat.
sed si filiam non interfecerit. sed solum adulterum
homicidii reus est. sed interuallum filiam interficerit
tant unde est . nisi psequatur illam interfecerit
continuationem enim animi uidetur legis auctori
tatis fecisset; K$\bar{p}$ dcxxvi: Idem Paulus eodē
singulari libro et titulo certę autem enumerantur
psonę quas uero liceat occidere in adulterio depre
hensam uxorem. quamuis uxorem non liceat ergo
secundum leges uero etiam filio familias pmitti
tur ėtiam domi suę deprehensum adulterum in
terficere seruum et eum qui auctoramento roga
tus est ad gladium uel etiam illum qui operas suas

Line.

1. iuliae de adul[teriis] *regarded by M. as an interpolation.* abrogat, *read* obrogat (*Scaliger*).
2. pater, *read* patri; *insert before* filias suas quas, si in, *and read* filia sua quam.
3. potestatem, *read* potestate; *for* ut *read* aut, *and supply* eo *before* auctore.
4. uero, *read* uiro; *for* mano, manū.
5. in quem, *read* isue in.
6. his = is; cum, *read* eum.
8. inuidia, *Huschke reads* in uidua, *but M.* in sui iuris.
11. *After* auctoritate quoque *add* legis (*Cujas*); pater posse interficeret, *read* patrem posse interficere.

Line.

12. cons, *read* consularem; uerum, *read* uirum; *for* in filiam, adulterium *read* in filia adulterum, *and before* in *insert* si eum (*Huschke*).
15. sed interuallum, *read* et si interuallo: interficerit, *should be* interfecerit.
16. tant unde, *read* tantundem.
17. continuationem, *read* continuatione.
17 *and* 18. auctoritatis, *read* auctoritate.
18. fecisset, *read* fecisse.
20. uero = uiro.
20 *and* 21. deprehensam uxorem, *read* deprehensa uxore.
22. uero = uiro.
23. etiam domi, *M. omits* etiam.



— 14 —

ut cum bestiis pug[naret locauit sed et iudicio publico dam]
natum licere interfi[cere in adulterio deprehensum uel liber]
tinum uel suum uel paternum [et tam ciuem romanū]
quam latinum. sed et patris et matris et filii et filię libertū
pmittitur occidere quo loco. et deditius haberetur debet
autem pfiteri aput eum cuius iurisdictio est eo loco ubi occi
dit et uxorem dimitteret. quod si non fecerit inpune non
interficit. sciendum est autem diuum marcum et commodū
rescripsisset eum qui adulterum inlicitę interfecerit le
uiori poenam puniri. sed et magnus antoninus pepercit
eas qui adulteros inconsulto calore ducti interfecerunt
et reliqua: Kp̄ dcxxvii: IDEM PAULUS EODEM
libro singulari et titulo; Qui iure marti uel patris qui
accusat potest, et sine calumnię poena uinci si iure extranei ac
cusat potest calumniae poena puniri. sed tantum post duo men
ses. intra quattuor menses utiles experitus licet talis sit qui
alia accusare non posit ut libertinus aut minor uiginti quin
que annorum aut infamis tamen accusationem admitti
tur ut et papianus libro xv scripsit; Kp̄ dcxxviii. Papi
anus libro xv responsorum; Sub titulo ad legem iuli
ani de adulteris ciuis romanus qui sine conuuio sibi pere
grinam in matrimonio habuit iutre quidem mariti eā
adulteram non postulat sed ea non opponetur infami
a uel quod liberatinus rem sextertiorum treginta miliū
aut filium non habuit ppriā iniuriā persequenti;

Line.

1. *At end of line in MS.* deo seruabat *is foreign matter.*
2. licere, *read* licet.
5. deditius = deditiiu haberetur, *read* habetur.
7. dimitteret, *read* dimittere
9. rescripsisset, *read* rescripsisse. inlicitę, *omit cedilla.*
10. poenam, *read* poena.
11. eas, *read* eis (*Huschke*). or si (*W*)
13. marti, *read* mariti.
15. tantum; *M has* tum,

Line.

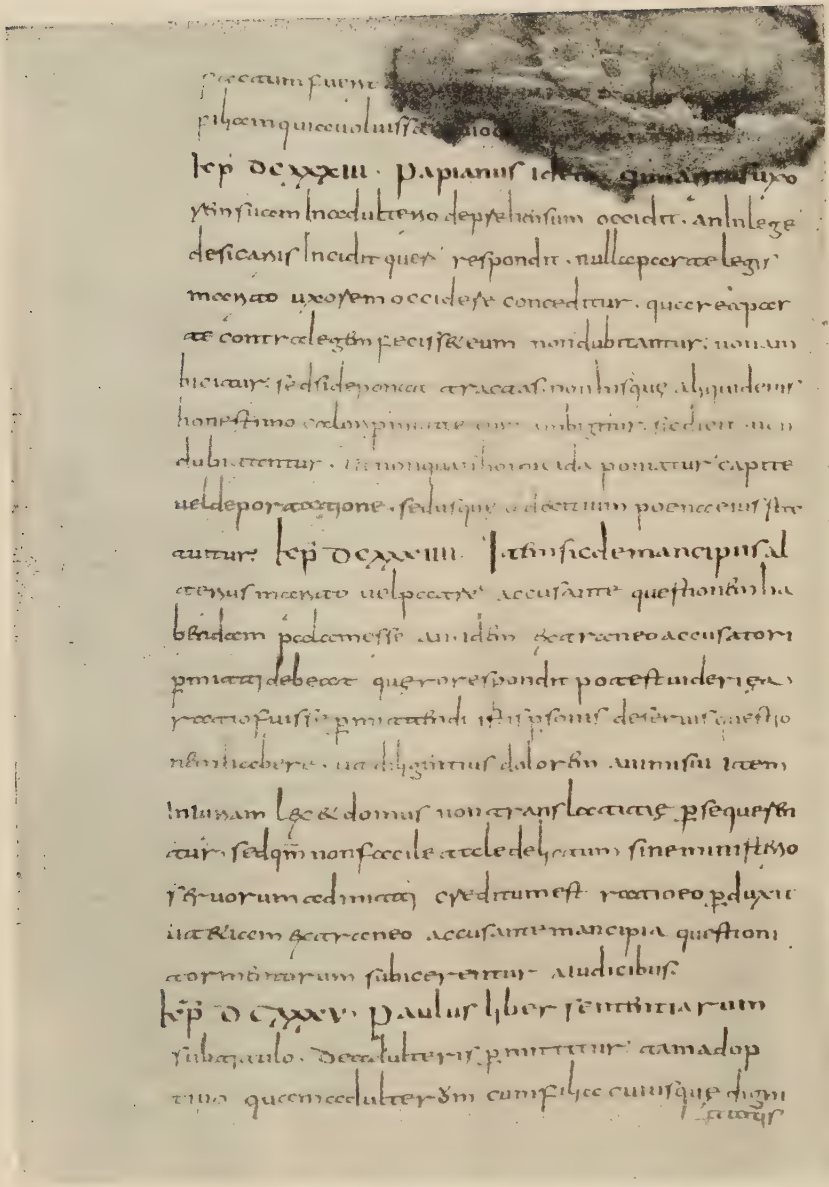
16. experitus, *read* expertus.
17. alia, *read* alias. posit = possit.
19 *and* 20. Papianus = Papinianus.
20 *and* 21. Iuliani, *read* Iuliam.
21. *After* qui *M. adds* ciuem Romanam. conuuio = connubio. sibi, *read* siue (*M.*).
22. iutre *read* iure.
23. ea, *read* ei.
24. sexteriorum = sestertiorum. treginta, e *for* i.

Paulus libro singulari ad edictum
[illegible] iudicetur iustum ut
[illegible] seueriusque castigandus ita
respondit. Cap. DCXXX. Papianus libro
singulari de adulteriis. Quae per errorem
ante nuptias filiam iure petitus accusare possit respondi oportere
dandi quidem secundum leges iura sunt eam filiam qua
habet in potestate. Iuris autem auctoritas non eandem conue-
nit. sed accusare iure petitus. nequidem ante nuptias
filiae impetrare prohibetur. Cap. DCXXXI: Papianus de eo-
dem singulari libro: Cum per eas leges regiae de re inspici.
untur. nec hisque potestatem quod bonum fuit legum con-
prehendit. ut potestatis pietas et exemplum secundi
uelle mihi scribere. nam scire cupio. respondit. num
quid secundum uirtutis praestare nobis argumentum. hoc ad leges
ago. ut non uideatur lex non habere dedisse. ut uidea-
tur incolorem equitatem ducatus adulterum occidit
sed. cum filiae pepercerit. Cap. DCXXXII:
Idem si pater quia adulterum occidit et filiae suae
pepercit quaero quid de uerisimile eum sit statuendum.
respondit. sine dubio is patet homicidae est. igitur
actione tenebitur. Legem cornelium desiderem si plane si eam
non uoluntate peccatis. sed casu seruauerit. non minime
habebit defensionem patet. quod soror filiam non
lex imponit homicidae. sed adulterio homicidium

Paulus libro singulari et titulo
[qui supra in] uxorem adulterum uindicatur iure mari
ti [non etiam spon]sam seuerus quoque et antoninus ita
rescripserunt. Kp̄ dcxxx, PAPIANUS LIBRO
singulari, de adulteris querebatur an pater emancipa
ta filiam iurę patris accusare possit respondit occi
dendi quidem facultatem lex tribuit eam filiam quā
habet in potestatem aut eum auctorem in manū conue
nit. sed accusare iurę patris. ne quidem emancipatum
filiam pater phibetur, Kp̄ dcxxxi. PAPIANUS EODĒ
singulari et titulo: Cum patri lex regia dederit in filiā
uitę, nechisque potestatem quod bonum fuit legem con
prehendit, ut potestas fieret etiam filiam occidendi
uelle mihi rescribere, nam scire cupio respondit, num
quid ex contrario prestat nobis argumentum. hec adiec
tio, ut non uideatur lex non habenti dedisse ut uidea
tur maiorem ęquitatem ductus adulterum occidis
set, cum nec filię pepercerit. Kp̄ dcxxxii;
Idem si pater qui adulterum occidit et filię suę
pepercit quero quid aduersus eum sit statuendum,
respondit, sine dubio iste pater homicida est. igitur
tenebitur legem corneliam, de sicariis plane si filiam
non uolūtate patris. sed casu seruata est, non minimā
habebit defensionem pater quod forte filiam. nam
lex ita ponit homicidam. si dolo malo homicidium

ine.
2. qui *missing in MS.*
2. adulterum, *read* adulterium.
5 *and* 6. emancipata, *read* emancipatam.
6. respondit, *read* respondi.
8. *After* aut *supply* quae; eum auctorem. *read* eo auctore.
9. emancipatum, *read* emancipatam.
10. *After* eodē *add* libro.
11. et titulo, *M. regards as an interpolation.*
12. nec hisque, *read* necisque, *and for* legem lege.
12 *and* 13. conprehendit, *read* conprehendi.

Line.
14. uelle, *read* uelis (*Cujas*).
16. *After* dedisse *M. supplies* sed occidi eam cum adultero iussisse.
17. maiorem equitatem, *read* maiore aequitate.
17 *and* 18. occidisset, *read* occidisse.
19. qui, *read* quis.
22. legem corneliam, *read* lege Cornelia.
23. uolūtate = uoluntate.
24. *After* forte *supply* fugit; filiam, *read* filia.
25. ponit, *read* punit.

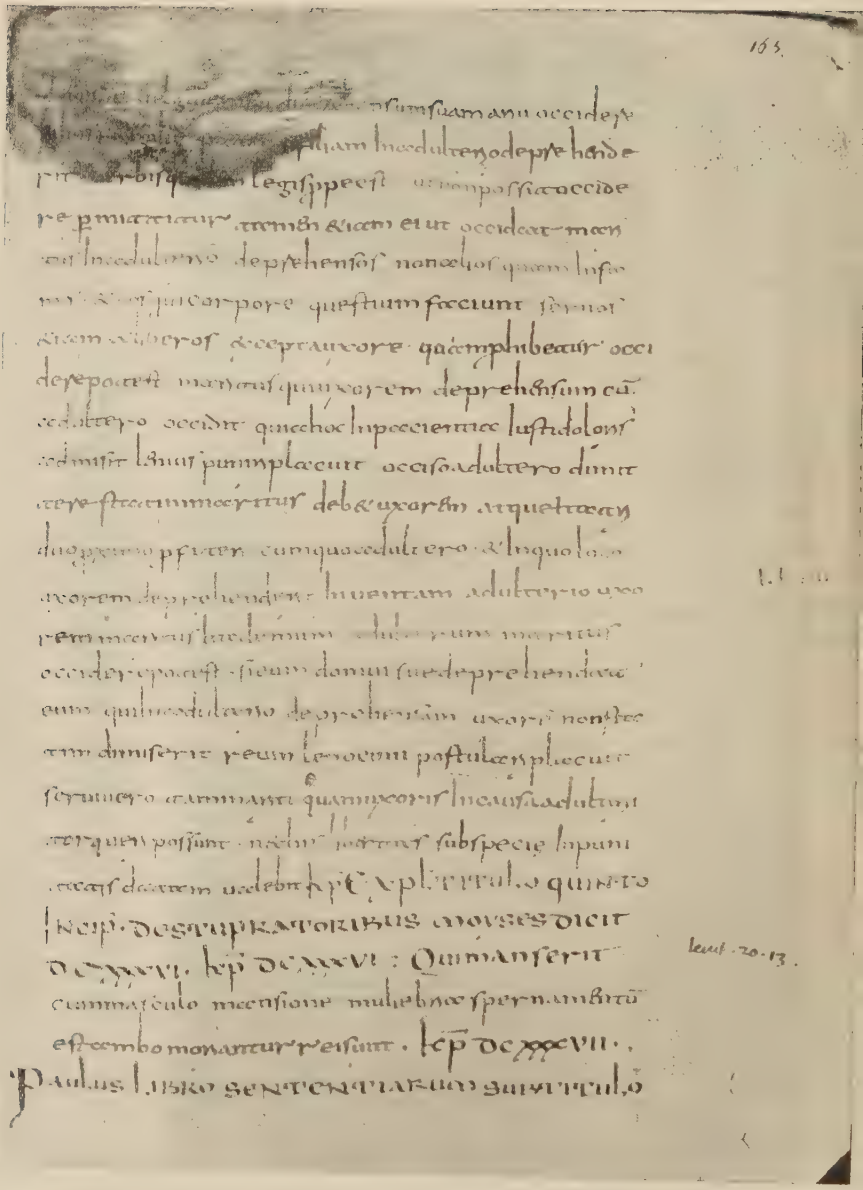


— 16 —

factum fuerit. hic au[tem pater non ideo seruauit]
filiam quia uoluisset qui oc[cidere eam non potuit.]
Kp dcxxxiii. Papianus idem si maritus uxo
rem suam in adulterio deprehensum occidit. an in lege
de sicariis incidit quero respondit. nulla parte legis
marito uxorem occidere conceditur. quare apar
te contra legem fecisset eum non dubitantur. non am
bicitur. sed si deponat tractas. non hisqꝫ aliquid eius
honestimo calori ꝑmittetur ambigitur. sic dicit. non
dubitantur, ut non quasi homicida poniatur capite
uel deportatione, sed usque ad exitium poena eius sta
tuitur. Kp̄ dcxxxiiii Item sic de mancipiis al
terius marito uel patre accusante questionem ha
bendam palam esse an, idem extraneo accusatori
ꝑmitti debeat quꝫro respondit potest videri ea
ratio fuisse ꝑmittendi istis ꝑsonis de seruis questio
nem habere. ut diligentius dolorem animi sui item
iniuriam lex et domus non translatitiꝫ ꝑsequeren
tur, sed q̄m non facile tale delictum sine ministerio
seruorum admitti creditum est ratio eo ꝑduxit
ut etiam extraneo accusante mancipia questioni
tormentorum subicerentur a iudicibus.
Kp̄ dcxxxv. Paulus liber sententiarum
sub titulo, de adulteris ꝑmittitur tam adop
tiuo quam adulterŏm cum filia cuiusque digni
tatis

Line.
2. uoluisset, *read* uoluit, *and add* sed, *reading* qui *as* quia.
3. Papianus, *M. omits*
4. deprehensum, *read* deprehensam; *for* lege, legem.
5. incidit, *read* incidat.
6 *and* 7. aparte, *read* aperte; *for* fecisset, fecisse.
7 *and* 8. *Omit* non dubitantur; ambicitur, *read* ambigitur.
8. deponat, *read* de poena, *and for* hisqꝫ, *read* inique (*Müller*).
9. honestimo, *read* honestissimo; *for* ꝑmittetur, permittitur.

Line.
9 *and* 10. ambigitur.....dubitantur, *omit* (*V. W.*).
10. poniatur = puniatur.
11. exitium. *read* exilium.
11 *and* 12. statuitur, *read* statuatur, *and for* item idem.
12 *and* 13. alterius, *read* alterutrius (*V. W.*).
14. esse, *read* est (*Schulting*).
18. lex et, *read* laesae (*W.*).
23. liber, *read* libro: *after* sententiarum, *supply* secundo (*M.*).
24 *and* 25. *After* permittitur *add* patri (*Paulus*), *and after* quam, naturali (*V. W.*).



— 17 —

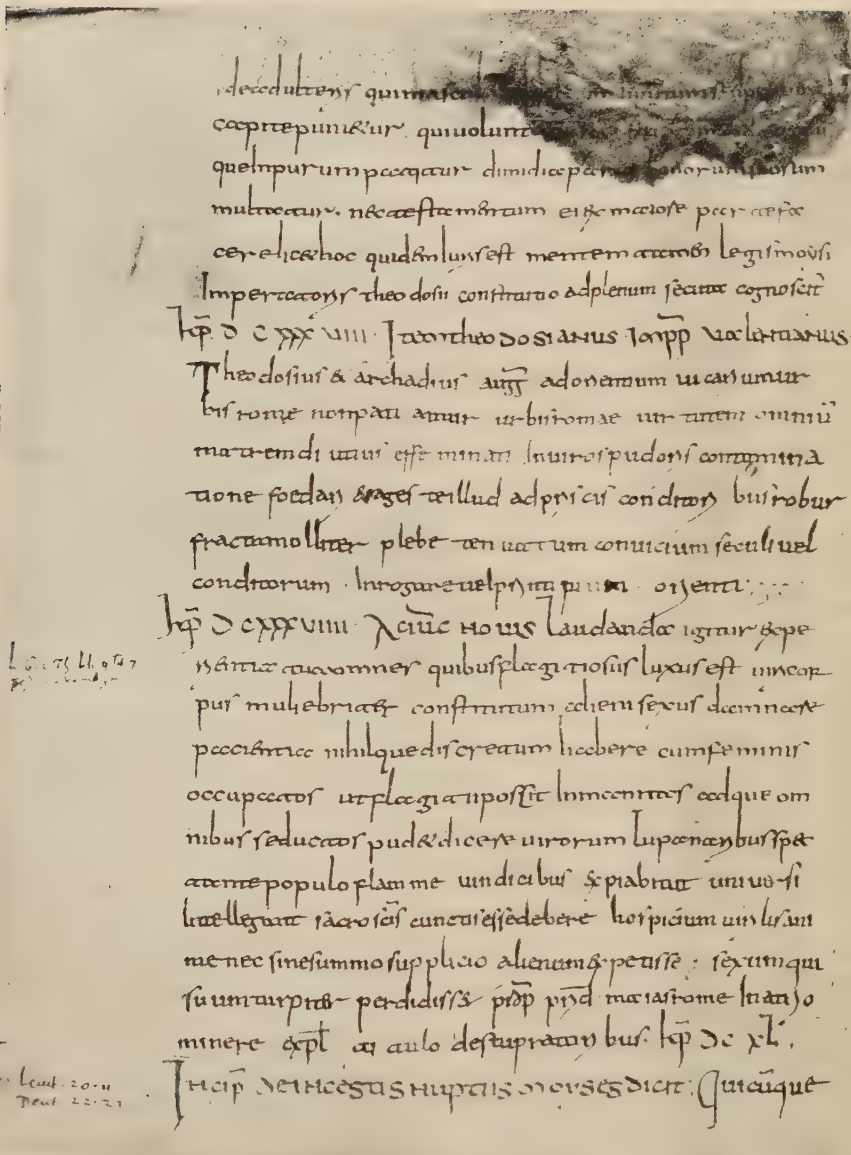
[domi suę uel generi sui depre]hensum sua manu occidere
filius familię [pater si] filiam in adulterio deprehende
rit uerbis quidem legis ꝑpe est ut non possit occide
re pmittitur tamen etiam ei ut occidat mari
tus in adulterio deprehensos non alios quam infa
mes. et eos qui corpore questium faciunt seruos
etiam et liberos excepta uxore quam ꝓhibetur occi
dere potest maritus qui uxorem deprehensum cū
adultero occidit quia hoc inpacientia iusti doloris
admisit leuius puniri placuit occiso adultero dimit
tere statim maritus debet uxorem atque ita tri
duo ꝓximo ꝓfiteri. cum quo adultero, et in quo loco
uxorem deprehenderit inuentam adulterio uxo Lib. 2, Ti. 26.
rem maritus ita demum adulterum maritus
occidere potest. si eum domui sue deprehendat
eum qui in adulterio deprehensam uxorē non sta
tim dimiserit reum lenocinii postulari placuit
serui uero tam mariti quam uxoris in causa adulterii
torqueri possunt. nec his libertas sub specię inpuni
tatis datam ualebit Kp̄ Expł titulo quinto
Incip de stupratoribus moyses dicit
dcxxxvi, Kp̄ dcxxxvi: Qui manserit Leuit 20: 13.
cum masculo mansione muliebri aspernamentū
est ambo moriantur rei sunt. Kp̄ dcxxxvii
Paulus libro sententiarum sub titulo

Line.

2. familię, *read* familias.
6. questium, *read* quaestum.
7. liberos, *read* libertos (*Pithou*).
8. maritus, *read* maritum, *and for* deprehensum, deprehensam.
13 *and* 14. inuentam . . . uxorem, *read* inuenta . . . uxore, *and insert* in *before* adulterio.

Line.

13. *Observe in Codex marginal reference to* Paulus, *by a later hand.*
15. sue, *cedilla omitted.*
19. specię = specie.
20. datam, *read* data, *observe marginal reference by later hand.*
22. *Observe in Codex marginal reference to Biblical quotation by later hand.*



— 18 —

de adulteris qui mascul[um liberu]m inuitum stup[rauerit]
capite punietur qui uolunt[ate sua stuprum flagitium]
que inpurum patitur dimidia parte bonorum suorum
multatur. nec testamentum ei ex maiore parte fa
cere licet hoc quidem iuris est mentem tamen legis Moysi
Imperatoris theodosii constitutio ad plenum secuta cognoscit
Kp̄ dcxxxvm. item Theodosianus Impp̄ Ualentianus
Theodosius et archadius augg̃ ad orientium uicarium ur
bis romę non patiamur urbis romae uirtutem omniū
matrem diutius effeminati in uiros pudoris contamina
tione foedari et ageste illud ad priscis conditoribus robur
fracta molliter plebe tenuatum conuicium seculi uel
conditorum. inrogare uel printipium orienti;;;;;;
Kp̄ dcxxxvm ac iuc NOUIS Laudanda igitur expe
rientia tua omnes quibus flagitiosus luxus est uiri cor
pus muliebriter constitutum alieni sexus damnare
pacientia nihilque discretum habere cum feminis
occupatos ut flagitii possit inmanitas adque om
nibus seductos pudet dicere uirorum lupanaribus spec
tante populo flamme uindicibus expiabit ut uniuersi
intellegant sacrosc̃is cunctis esse debere hospicium uirilis ani
me nec sine summo supplicio alienum expetisse; sexum qui
suum turpiter perdidisset prop̄ prid̄ maias rome in atrio
minere Exp̄ titulo de stupratoribus. Kp̄ dcxl,
Incip̄ de Incestis Nuptiis Moyses dicit: Quicūque

Line
6. cognoscit, *read* cognoscitur.
7. ualentianus = Ualentinianus.
8. archadius = arcadius. augg, *read* auggg.
9. patiamur, *read* patimur; *for* urbis romae uirtutem *read* Urbem Romam uirtutum.
10. uiros = uiro.
11. ageste = agreste; ad *for* a.
12. seculi, *read* saeculis.
13. printipium, *read* principum.
14. iuc NOUIS = iuc(undissime) nobis.
15. *L.* 6 C. *Th.*, lib. 9, Tit. 7, sed non adeo integer *on margin by a later hand.* uiri, *M. reads* uirile.
17. pacientia = patientia.
18. possit, *read* poscit. adque = atque.
19. seductos, *read* eductos.
20. flamme, *cedilla wanting.*
21. sacrosc̃is = sacrosanctis, *read* sacrosanctum.
22. anime, *cedilla wanting*, *read* animae.
23. rome, *cedilla wanting*, *read* Romae.
24. minere, *read* Mineruae.

Line 25. Levit. xx. 4; Deut. xxii. 22, *on margin by a later hand.*

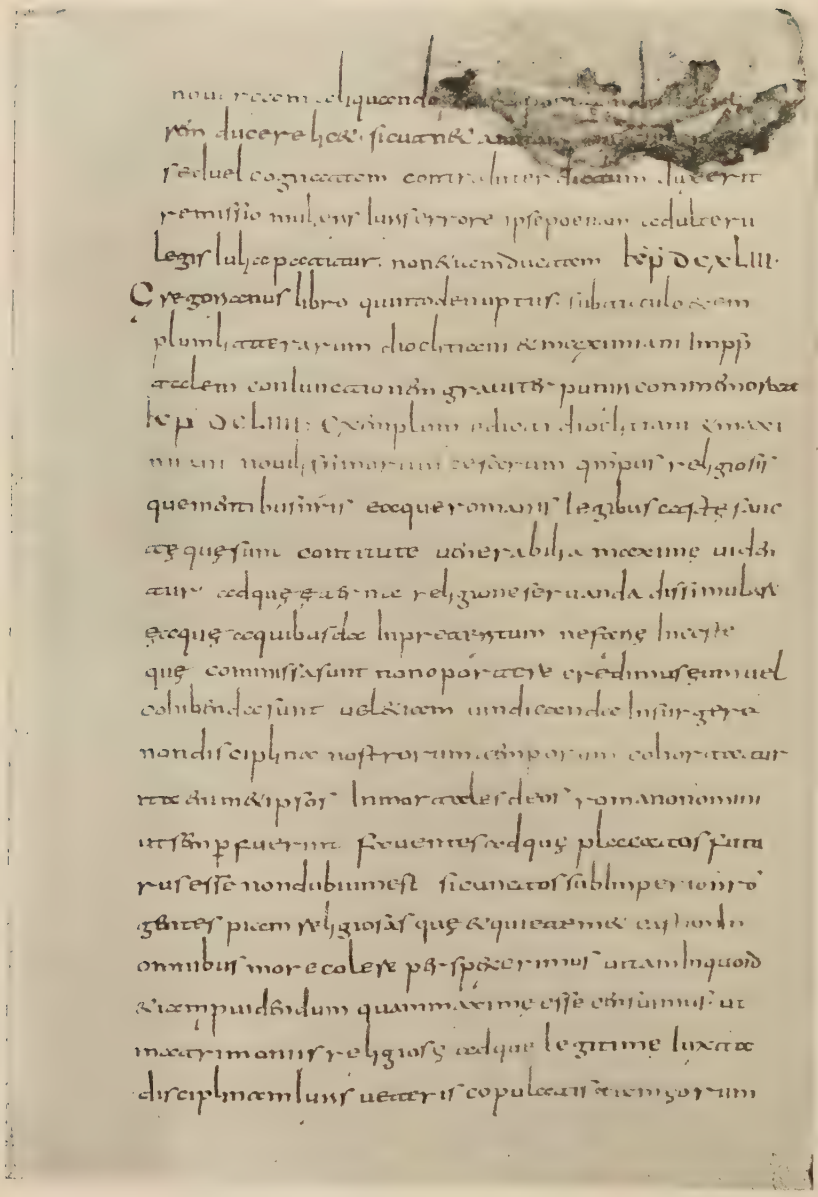
uxorem peccatrissui pu
moratum mosantur. ambo
reisunt. &quicumque concubuerit cumnurusue
moratummoriantur. ambo reisunt.

kp̄ dcxli. Ulpianus libro regularidenup
tus subbaculo. Inter poenitentes & liberos cuius
cumque gradus sit conubium non est. Inter cog-
natos autem & extraneos gradu olim quidem usq;
eo quaerebatur cum gradum matrimonia contrahi non pote-
rant nunc autē secundo gradu hic uxorem ducere defectum
tum fratris filia non est eam sororis nec amitam nec mat-
ternam quam uir eodem gradu sunt. eam que nouerca
uel priuigna uel que nurus uel socrus fuit uxorem du-
cere non possumus. si quis eam quam non licet uxorem
duxerit. Incestum matrimonium contrahit ideo
que liberi inpoenitentiae eius non sunt. sed quasi
nulgo conceptus puniuntur. kp̄ dcxlii.
Paulus hanc sententiae rerum. denupturus subbaculo
Inter poenitentes & liberos huius cuiusmodi matrimo-
nia contrahi non possunt. nec filiam sororis. aut nep
tem uxorem ducere non possumus. neptis autem
patruus uxorem ducere non possumus. priuignae autem
patrui. prohibet adoptiuae cognatio impedit nuptias.
Inter peregrinos haec liberos omnimodo Inter priuatos
exactius quaerimus. cuius initium non inter-
uenit. nec scimus nec nurum priuignam. nec

[concubuerit] cum mulierem uxorem patris sui pu
[denda patris sui de]texit mortem moriantur, ambo
rei sunt, et quicumque concubuerit cum nuru sua
mortem moriantur ambo rei sunt
Kp̄ dcxli. Ulpianus libro Regulari de Nup
tiis sub titulo. Inter parentes et liberos cuius
cumque gradus sit conubium non est inter cogna
tos autem ex transuerso gradu olim quidem usq3
ad quartum gradum matrimonia contrahi non pote
rant nunc aut ex tercio gradu licet uxorem ducere sed tan
tum fratris filia non etiam sororis nec amitam nec matr
terram quamuis eodem gradu sint. eamque nouerca
uel priuigna uel que nurus uel socrus fuit uxorem du
cere non possumus si quis eam quam non licet uxorem
duxerit incestum matrimonium contrahit ideo
que liberis in potestate eis non fiunt. sed quasi
uulgo concepti spurii sunt. Kp̄ dcxlii.
Paulus liber sententiarum. de nuptiis sub titulo
inter parentes et liberos iure ciuili matrimonia
contrahi non possunt. nec filiam sororis. aut nep
tem uxorem ducere non possumus ꝓnepte ętatis.
ratio ꝓhibet adoptiua cognatio impedit nuptias
Inter parentes hac liberos omnimodo inter fratres
eatenus quatenus capitis minutio non inter
uenit. nec socrum nec nurum priuignam, nec

Line
1. mulierem uxorem, *read* muliere uxore.
5. regulari, *read* Regularum singulari.
5 *and* 6. de nuptiis sub titulo, *transpose to* sub titulo de nuptiis.
7. sit, *read* sint.
11. filia, *read* filiam.
11 *and* 12. mātterram, *read* materteram.
12. eamque = eam quae.

Line
16. liberis, *read* liberi, *and for* eis, eius (*Ulpian*).
18. liber, *read* libro; *after* sententiarum *add* secundo, *and transpose* de nuptiis sub titulo *to* sub titulo de nuptiis.
21. *Omit* non.
23. hac = ac.
25. *Before* priuignam *insert* nec.



nouercam aliquando [citra] poenam in[cesti uxo]
rem ducere licet, sicut nec amitam [aut materteram]
sed uel cognatam contra interdictum duxerit
remissio mulieris iuris errore ipse poenam adulterii
legis Iulia patitur, non etiam ductam Kp̄ dcxliii.
Gregorianus libro quinto de nuptiis, sub titulo exem
plum litterarum dioclitiani et maximiani imp̄p̄
talem coniunctionem grauiter puniri commemorat
Kp̄ dcliii: exemplum edicti dioclitiani et maxi
miani nouillisimorum cesarum qm̄ piis religiosis
que mentibus nr̄is eaque romanis legibus castę sanc
tęque sunt contitute uenerabilia maximę uiden
tur adquę ęterna religione seruanda dissimulare
ęaquę a quibusdā in preteritum nefarię incestę
quę commissa sunt non oportere credimus ęum uel
cohibenda sunt uel etiam uindicanda insurgere
non disciplina nostrorum temporum cohortatur
ita enim et ipsos inmortales deos romano nomini
ut semp fuerint fauentes adquę placatos futu
rus esse non dubium est si cunctos sub imperio nr̄o
gentes piam religiosasquę et quietem et castum in
omnibus more colere perspexerimus uitam in quo id
etiam ꝓuidendum quam maximę esse censuimus. ut
matrimoniis religiosę adque legitimę juxta
disciplinam iuris ueteris copulatis tam ęorum

Line.

3. *After* sed *supply* qui affinem.
4. remissio mulieris *read* remisso mulieri (*V. W.*).
5. ductam, *read* ducta,
6. de nuptiis sub titulo, *transpose to* sub titulo de nuptiis.
8. puniri, *read* punire.
9. dioclitiani = Diocletiani.
10. nouilissimorum, u *for* b.
11. n r i s = nostris. eaque = ea quae. castę sanctę, *faulty cedillas.*
12. contitute, *read* constituta, maximę faulty cedilla.
13. adquę = atque.

Line.

14 *and* 15. *faulty cedillas in following words:* ęa (in ęaquę), nefarię, incestę, quę, ęum. 14 quibusdā = quibusdam; preteritum = praeteritum.
15. ęum, *read* cum (*V. W.*).
17. non, *read* nos (*V. W.*).
19. fuerint, *read* fuerunt.
19 *and* 20. futurus, *read* futuros.
21. *for* gentes, *read* agentes (*V.*); religiosasquę, religiosamque (*V. W.*); quietem, quietam (*W.*); *and for* castum, castam.
22. more, *M. writes* mere, *Huschke* more maiorum.
23. maximę, *faulty cedilla.*

[illegible] coniunctione sequamur
[illegible] eum de incepto seruitute religione
nascatur. Inspicere esse consultum & honestum
aeneas ecclesiis reconpositionis ipsis purgatione fiat.
id enim pijs cunctis nostre mentis placuit ut sic
necessitudinum nomina optineant. Spiritales
cessiuos piembhac religiosam consanguinitatis de
bitam exercitium. Nec esse enim ecclesiastes quae
Inpreterea tum a conplumbi constare esse commissa
cum pecudum hac ferarum promiscuo ritu ad Inl
icitae connubia Instincta sceleribus libidinosse
ullo respectu pudoris hac pietatis Inruerunt.
sed quicunque ante hac uel Inpetrum delinquen
dum uel ignorantia iuxta bonos Inmanitatis
riam & Inhertis mentis simulatur admissa
quamquam essent seuerissime uindicanda cum
contemplatione clementie nre ad indulgentiam
uolumus pertinere. Ita tamen ut quicunque In
ante actum tempus Inhertis incestis quesema
rimonijs polluerunt hactenus adeptosse esse
nram Indulgentiae sciat. ut post a me nefarios
fecinoris ream quidam sibi grauiter esse con
cessos sciat tamen non legitimos esse suscepisse libe
ros quos tam nefandae coniunctione genuerunt
nec enim sic uacat futuro quoque nemo audeat
Inefrenatis cupiditatibus obedire. cum hi scelera
tae precedentes admissores istius modi crimina
ubique liberentur. ut liberorum quod Inhertis

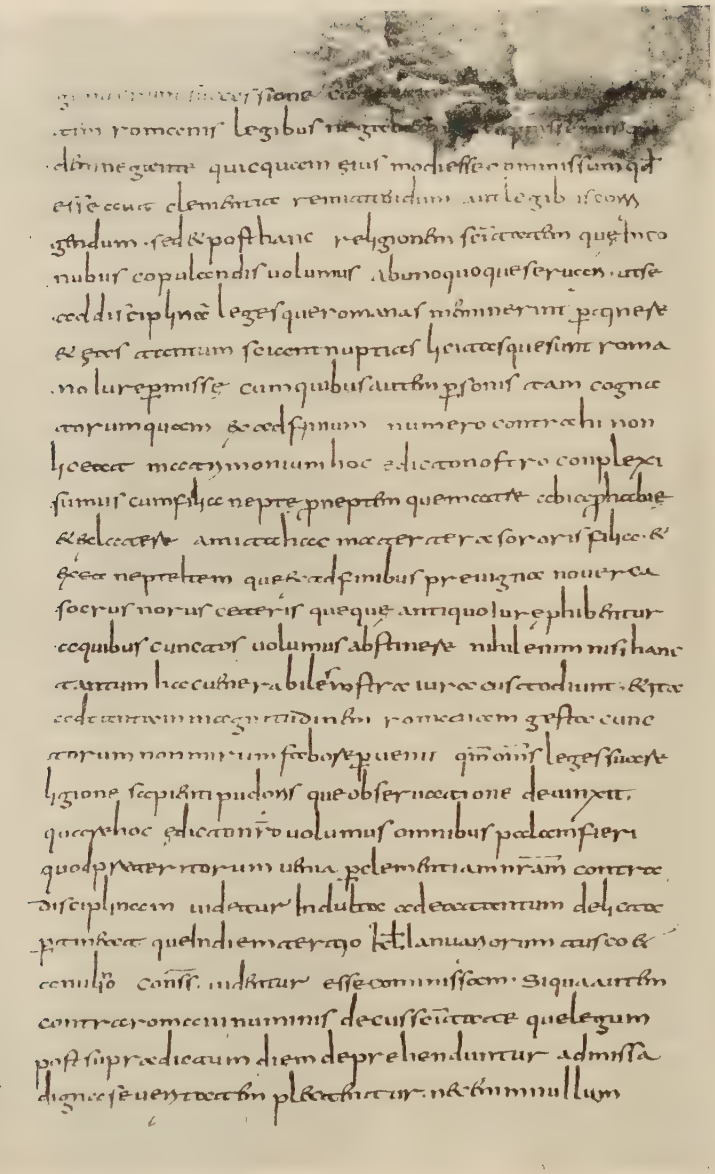
[honestatum qui nuptiarum] coniunctione sectantur
quam [etiam his qui] cum deinceps seruata religione
nascetur incipiat esse consultum et honesta
te nascendi etiam posteritas ipsa purgata sit
id enim pietati nostrę maximę placuit ut scę
necessitudinum nomina optineant aput afec
tos suos piam hac religiosam consanguinitatis de
bitam caritatem nefas enim credere est ęaquę
in preteritum a conplurib3 constat esse commissa
cum pecodum hac ferarum promiscuo ritu ad inli
cita conubia instinctum exercendę libidinis sine
ullo respectu pudoris hac pietatis inruerint.
sed quęcumquę antehac uel inperitiam delinquen
tium uel p ignorantia iuris barbaricę inmanitatis
ritum ex inlicitis matrimonii si uidentur admissa
quamquam essent seuerissemę uidicanda tam
contemplationé clementię nrę ad indulgentiā
uolumus ptinere, ita tamen ut quicumquę in
ante actum tempus inlicitis incestisque se ma
trimoniis polluerunt hactenus adeptos se esse
nram indulgentia sciat ut post tam nefaria
facinora uitam quidem sibi gratulentur esse con
cessā sciant tamen non legitimos se suscepisse libe
ros quos tam nefaria conjunctionē genuerunt
ita enim fiet ut de futuro quoque nemo audeat
inefrenatis cupiditatib3 oboedire cum et sciant
ita praecedentes admissores istius modi criminū
ueniam liberatos. ut liberorum quod inlicitae

Line.

1. *For* honestatum *read* honestati; coniunctione, coniunctionem.
2. cum, *M. writes* inde.
3. nascetur, *read* nascentur.
5. scę = sanctae, *read* sancta (*Cujas*).
6 *and* 7. afectos, *read* affectus.
7. hac = ac; consanguinitatis, *read* consanguinitati.
8. ęaquę = ea quae.
9. preteritum = praeteritum.
10. pecodum, *read* pecudum; hac = ac.

Line.

11. instinctum ęxercendę, *read* instinctu execrandae (*Schulting*).
12. hac = ac.
13. inperitiam, *read* inperitia.
15. ritum, *read* ritu; matrimonii si, *read* matrimoniis (*V W.*).
16. seuerissemę = seuerissime. uidicanda, *read* uindicanda. tam = tamen.
24. coniunctioné, *read* coniunctione.
26. inefrenatis, *M. has* infrenatis.
28. *For* ueniam *read* uenia; *for* quod, quos. inlicitae, *read* imlicite.



genuerunt successione ca[reatur quae iuxta uetusta]
tem romanis legibus negabat[ur e]t optassemus qui
dem negante quicquam eius modi esse commissam q̄d
esse aut clementia remittendum aut legibus corri
gendum. sed et posthanc religionem scītatem quę in co
nubiis copulandis uolumus ab unoquoque seruari, ut se
ad disciplinā legesque romanas meminerint ptinere
et ęas tantum sciant nuptias licitas que sunt roma
no iure pmissę cum quibus autem psonis tam cogna
torum quam ex adfinium numero contrahi non
liceat matrimonium hoc edicto nostro conplexi
sumus cum filia neptę pneptemque matre abia phabię
et ex latere amita hac matertera sororis filia. et
ex ea nepte itemque ex adfinibus preuigna nouercą
socrus norus ceterisque quę antiquo iure prohibentur
a quibus cunctos uolumus abstinere nihil enim nisi hanc
tantum hac uenerabile[s] nostra iura custodiunt, et ita
ad tantum magnitudinem romanam gesta cunc
torum non mirum fabore puenit q̄m oms leges sua re
ligione sapienti pudorisque obseruatione deuinxit,
quare hoc ędicto nro uolumus omnibus palam fieri
quod preteritorum uenia p clementiam nram contra
disciplinam uidetur indulta ad ea tantum delicta
ptineat que in diem tertio KŁ Ianuariorum tusco et
anulin̄o conss. uidentur esse commissam, si qua autem
contra romani numinis decus scītateque legum
post supra dictum diem deprehenduntur admissa
digna seueritatem plectentur. nec enim nullum

Line.

1. careatur, *read* arceantur (*Puteanus*).
3. negante, *read* nec ante (*V. W.*).
4. esse, *read* esset.
5. post hanc, *read* post hac ; scītatem = sanctitatem ; quę = que.
6. ęas = eas. que, *read* quae.
12. neptę, *read without cedilla*. pronepte, *read* pronepte itemque (*W.*). abia = auia. phabie, *read* proauia,
13. hac = ac.
14. preuigna, *read* priuigna,
15. socrus, norus, *read* socru nuru.
16 *and* 17. hanc tantum, *read* sanctum (*Puteanus*).
17. hac = ac, uenerabiles, *read* uenerabile.

Line.

18. romanam gesta, *read* romana maiestas (*V. W.*).
19. *For* non mirum, *read* numinum (*Puteanus, cf. V. and W.*). sua, *read* suas (*V. W.*). *For* fabore, fauore. q̄m-quoniam ; oms = omnes.
22. *After* uenia, *add* quae (*V.*).
24. tertio, *read* tertium.
25. anulino, *read* Anullino. commissam, *read* commissa.
26. numinis, *read* nominis. scītateque = sanctitatemque.
27. deprehenduntur, *read* deprehendentur.
28. *For* seueritatem, *read* seueritate ; *for* nullum, ullam.

quisquam & cum & ubi cum se con
[illegible] quesse. eundem cum & post edictum.
nisi non dubitaverit Insuese. D. Ut et matrimonia sco
rum sacrosanctum. const. hēp de xlv

Cr mogenianus subscripsit. Denuptis impp. diocletia
nus & maximianus aug. pl. placiano his qui incestus
nuptias perrorē contrahunt nepoenis subiacentur
tredanum clemētiae principum subuenit. si post ea
quae me rrorē suum rescierint ilyconefaciens nup
tias dirimerint. pōsp. id m. ypt. & diogne cons.
hēp de xlvi: Hanc quoque constitutionē gregor
anus sacrosanctulo. Denuptis inseruit quae est ac rice sima
& secunda ecclesiam & die. ideftum stratio pōsp. aid
lium. diocletiano ter. & maximiano augustis.
hēp de xlvii. papinianus lib. singulari. Dec dubi
tatur quesō rorius filiam uxorem duxerat per orem an
ea quem puer nuretur. ecclesiae sit dirimit cohortum
quero censed huc possit accusus. respondit. & si con
iuncta soror uxoris filiae bona fide. abstinuit pobrem se
miscuit. pacem est quia qui errorem cognito distinxit
cotum credatur eius uoluntatis fuisse. utsi scisset se
ineo necessitudinis gradu positum non fuisse & talem ma
trimonium copulaturus. hēp de xlviii:
Damnicatur ineos qui incestis nuptiis coniuxerunt
maledictis tem p. sunt omnes incestus p legem cum. de
huc rudibus populis & iuuenondto contra is dem ab sti
pulationibus. sunt recusandi & ut quemnis maledicta punitis sunt
quos diuina & humana sententia consonat uocedum mauri
legi diuina sic dicit.

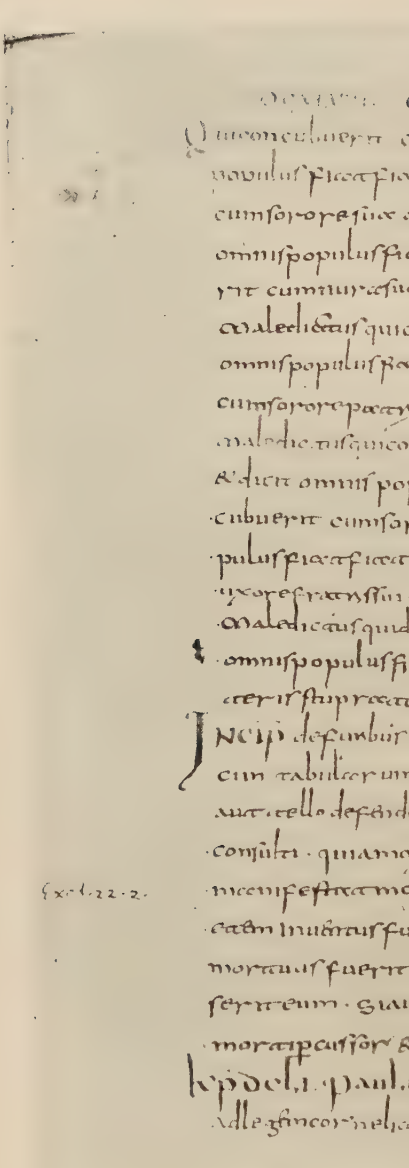
in ta[m nefario sce]lere quisquam extimet ueniam se con
sequi posse qui [tam] euidenti crimen et post edictum
nrum̃ non dubitabit infuere. dāt K℔ maias damasco
tusco et anolino cons℔, Kp̄ dcxlv

Ermogenianus sub titulo de nuptis Impp. dioclitia
nus et maximianus agg. F℔. flauiano his qui incestas
nuptias p errore contrahunt. ne poenis subiciantur
ita demum clementia principum subuenit, si postea
quam errorem suum rescierint ilico nefarias nup
tias dirimerint. prop. id. mart. et diogene cons.
Kp̄ dcxlvi: hanc quoque constitutionē gregori
anus titulo. de nuptiis inseruit que est tricesima
et secunda aliis tam et die. id est constitutio prop. v id
Iun. dioclitiano ter et maximiano augustis
Kp̄ dcxlvii: papianus lib singulari. de adulte
ris que sororis filiam uxorem duxerat p erorem an
tequam pueniretur a delatore dirimit cohitum
quero an adhuc possit accusari respondit, et qui con
iunctę sororis filię bona fide abstinuit poenam re
mitti. palam est quia qui errorem cognito diremit
coitum creditur eius uoluntatis fuisse. ut si scisset se
in eo necessitudinis grado positum non fuisset talē ma
trimonium copulaturus: Kp̄ dcxlviii:

Idem dicitur in eos qui incestas nuptias contraxerunt
maledicti tamen sunt omnes incestis p lege cum ad
huc rudibus populis ex diuino n℔to condita isdem absti
pulantib℩ sanciretur, et utique oms maledicti puniti sunt
quos diuina et humana sententia consona uoce damnauit
lex diuina sic dicit

Line.
1. extimet = aestimet.
2. crimen, *read* crimini,
3. infuere, *read* inruere (*V. W.*).
4. anolino, *read* Anullino.
5. Ermogenianus, *read* Hermogenianus.
6. agg = augg.
6. f℔ = flauio.
10. dirimerint, *read* diremerint. prop id mart = proposita idibus Martiis. *After* mart, *read* Tiberiano (*V. W.*). diogene, *read* Dione (*V. W.*).
12. que = quae,

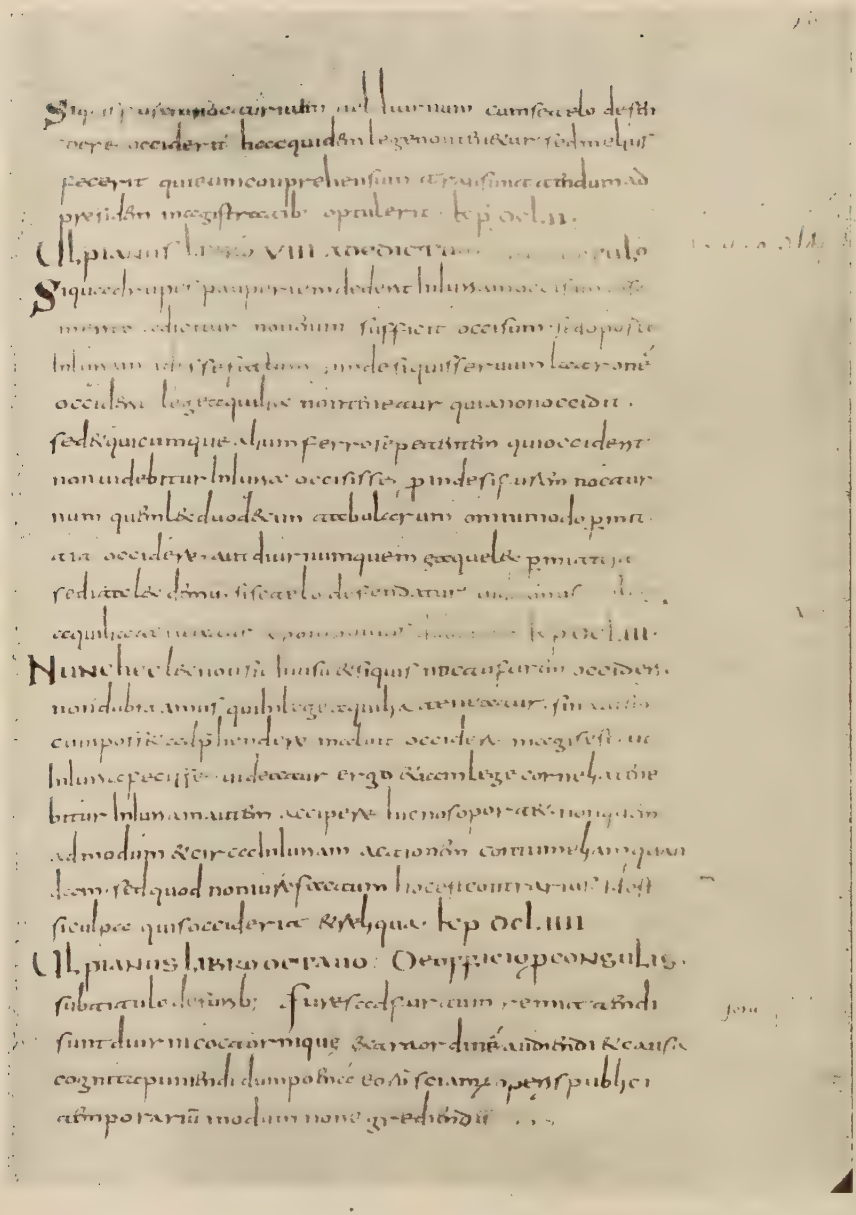
Line.
13. *After* et die *insert* et cons (*V. W.*).
13 *and* 14. prop V id Iun. = proposita V idus Iunias.
16. que = qui. perorem = per errorem.
17. cohitum = coitum.
18 *and* 19. coniunctę, *read* coitu (*M.*).
20. errorem = errore. dirimit = diremit.
22. grado = gradu.
25. incestis, *read* incesti. lege, *read* legem.
26. noto *or* nuto, *read* nutu.
26 *and* 27. abstipulantib℩ = adstipulantibus.



Kp̄ dcxlvm. Maledictus inquid dixit Moyses
Qui concubuerit cum uxorem patri sui et dicit omnis
populus fiat fiat. Maledictus qui concubuerit
cum sorore sua de patre aut de matre et dicit
omnis populus fiat fiat. maledictus qui concubue
rit cum nura sua, et dicit omnis populus fiat fiat
Maledictus qui concubuerit cum socrus sua, et dic̃
omnis populus fiat fiat: maledictus qui concubuerit
cum sorore patris sui. et dicit omnis populus fiat fiat
Maledictus qui concubuerit cum sorore matris sue̊
et dicit omnis populus fiat fiat: maledictus qui con
cubuerit cum sorore uxoris sue̊ et dicit omnis po
pulus fiat fiat: maledictus qui dormierit cū
uxore fratris sui, et dicit omnis populus fiat fiat,
Maledictus qui dormierit cum omne pecore, et dic̃
omnis populus fiat fiat, , . Exp̄l titulo de adul
teris stupratoribus et incestis Kp̄ dcl:
Incip̃ de furibus et de poena eorum. Quod si duode
cim tabularum nocturnum furem autem si se
aut tello defendere interfici iubent scitote iuris
consulti. quia moyses prius hoc statuit si cui leccio
manifestat moyses dicit. si p̊fodiens nocte pari
etem inuentus fuerit furem p̊cusserit eum alius et
mortuus fuerit hi non est homicida his qui percus
serit eum. si autem sol ortus sup eum reus est
morti p̊cussor et ipse morietur;
K̄p̄ dcli: Paulus libro sententiarum ⁀V,
ad legem corneliam de sicaris et beneficis:

Line.
1. inquid = inquit.
2. uxorem, *read* uxore. p̄patri, *read* patris.
3. Deut. 27, *on margin by a much later hand*.
6. nura *for* nuru.
7. dic̄ = dicit.
15. omne *for* omni.
16. Exp̄l = explicit, titulo, *read* titulus.
19. *After* furem *Blume adds* quoquomodo, diurnum.

Line.
19 *and* 20. si se aut tello, *read* si se audeat telo (*Schulting*),
21. si cui, *read* sicut (*V.*). leccio, *read* lectio.
22. Exod. 22. 2, *on margin by a much later hand*.
23. furem, *read* fur et.
24. hi, *read* hic (*V.*); his = is.
25. *After* ortus *add* fuerit.
26. morti, *read* mortis (*W.*).
28. beneficis = ueneficis.



si quis furem nocturnum uel diurnum cum se telo defen
dere occiderit hac quidem lege non tenetur. sed melius
fecerit qui eum conprehensum transmittendum ad
presidem magistratib3 optulerit. Kp̄ dclii.
ULPIANUS LIBRO VII AD EDICTUM SUB TITULO
si quadrupes pauperiem dederit iniuriam occisum esse
merito adicitur, non enim sufficit occisum. sed oportet
iniuriam. id esse factum. ꝑinde si quis seruum latronē
occiderit lege aquilia non tenetur quia non occidit,
sed et quicumque alium ferro se petentem qui occiderit
non uidebitur iniuria occisisse. ꝑinde si furem noctur
num quem lex duodecim tabularum omnimodo pmit
tit occidere aut diurnum quem ęaque lex pmittit
sed ita lex demū, si se telo defendatur uideamus an legē
aquilia teneatur. et Pomponius dubitat. Kp̄ dclii.
NUNC hec lex non sit in usu et si quis noctu furem occiderit
non dubitamus quin lege aquilia teneatur. sin autem
cum posset ad p̄hendere maluit occidere magis est. ut
iniuria fecisse uideatur ergo etiam lege cornelia tene
bitur iniuriam autem accipere hic nos oportet. non quem
admodum et circa iniuriam actionem contumeliam quan
dam. sed quod non iure factum hoc est contrarius, id est
si culpa quis occiderit et reliqua. Kp̄ dclim:
ULPIANUS LIBRO OCTAVO: DE OFFICIO PCONSULIS
sub titulo de furib3 Fures ad furtum remittendi
sunt diurni coctorniquę extraordinē audiendi et causa
cognita puniendi dum poena eorū sciam/ operis publici
temporariū modum non egrediendū , , ,

Line.
1 *and* 2. defendere, ***read*** defenderet.
5. *on mar. in*, l. 3 ad l. Aq. *reference to* ***Digest ix. 23, by later hand.***
6. iniuriam, ***read*** iniuria.
8. inuriam, ***read*** iniuria.
9. *After* quia ***Blume supplies*** iniuria.
10. quicumque, ***read*** quemcumque (***Digest***).
11. occisisse, ***read*** occidisse.
13. ęaque = aeque (***Cujas***).
14. lex ***omit***; ***for*** defendatur, ***read*** defendat; ***for*** legē, lege.

Line.
16. nunc, ***read*** num (***W.***).
17. ***After*** aquilia ***supply*** non (***Digest***).
18. Ad phendere, ad prehendere.
21. iniuriam, ***read*** iniuriarum.
25. furtum, ***read*** forum (***noted in margin of MS: by later hand***).
26. coctornique, ***read*** nocturnique.
27. dum, ***read*** dum modo (***Digest***). sciam/= sciamus.
28. temporariū, ***read*** temporari (***Digest***).

kp̄ dcl.v. Idcoq̄ inhac ne ...
...
...

Kp̄ dclv. Ideo et in balneariis furibus sed si se telo
fures defendunt uel efractores uel ceteris miles,
nec quemquam pcusserunt metalli poenas humiliores
honestiores uero relegatione adficiendi erunt:
Kp̄ DCLVI. PAULUS LIBER SENTENTIARUM SUB
TITULO, de furibus furti quocumque genere damnatus
famosus efficitur fur est qui rem alienam contrec
tat furtorum genera sunt quattuor manifesti, nec
manifesti concepti, et oblati manifestus fur est. qui
in faciendo deprehensus ~ et intra terminos eius locum
defuratus est conprehensus est, uel antequam ad eum
locum destinauerat puenerit, nec manifestatus est
fur qui intra rapiendo quidem conprehensus non est,
sed eum fecisse negari non potest concepti actione
tenetur aput quem furtum est inuentum oblati
accione his tenetur qui rem furtiuam ali optulit ne
aput se inueniretur furti accionem his agere potest.
cuius interest rem non perisse conceptiua autem
agere potest qui rem concepit et inuenit oblatę agere
potest poenes quem res concepti inuenta est:
EXPL TITULUS DE FURIBUS. INCIPIT DE FALSO
TESTIMONIO MOYSES DICIT
Kp̄ dclvii. Si steterit testes iniustus aduersus homi
nem accusandum accusans eum impietatis stabunt
duo homines quibus est inuicem contemptio ante dm
et ante sacerdotes, et ante iudices, quicumque fue
rint in illis diebus cum inquisierint iudices dili
genter, et in uentus fuerit testis iniustus testificans

Line.
1. ideo, *read* idem.
2. efractores, *read* effractores; ceteris miles, *read* ceteri his similes (*Dig.*).
3. poenas *for* poena.
5. *After* sententiarum *add* II (Index). lib. 2 Tit. 31 (*reference to Paulus*) *on margin by later hand.*
10. *The mark* ~ = est; *after* et *add* qui; *for* locum *read* loci.
11. defuratus, *M. has* unde furatus.
12. *After* locum, *read* quo. manifestatus, *read* manifestus.

Line.
13. intra rapiendum, *read* in rapiendum.
16. accione, ci *for* ti. his = is.
17. his = is.
19. oblatę, *read* oblati.
20. poenes = penes. concepti *for* concepta.
21. explt = explicit.
3. testes *for* testis. Deut. 19, 16 (*Biblical reference*) *on margin by later hand.*
25. contemptio, *read* contentio. dm̄ = dominum.

[illegible] falsum feceris et sicut uolunt
[illegible] malum) de medium uestrum
& cetera audient & timebunt nec audebunt hoc malo
facere. Explicit. liber quartus: Incipit liber quintus: Paulus liber sententiarum
Capitulum I. De lege Cornelia testamentaria. Lex Cornelia de falsis
testamentis ac nummariis siue de falsis. Hac lege tenetur qui falsum
testimonium dixerit uel quid falsi scripserit recitauerit signauerit
signandumue curauerit. Pari poena adficitur qui in iudicio falsum
instrumentum prolatum scierit. Falsum autem testimonium dicit
qui in iudicio falsum testem dixerit. Falsum instrumentum dicitur
quod non habet ius suum. Falsum testem dicit qui falsum testimonium
dixerit. Falsum instrumentum scribit qui falsum testamentum
scripserit. Falsum recitat qui falsum testamentum recitauerit.
Falsum signat qui falsum testamentum signauerit. Falsum signandum
curat qui falsum testamentum signandum curauerit. Falsum
instrumentum prolatum scit qui falsum testamentum prolatum scierit.
Capitulum II. De lege Cornelia de sicariis et ueneficis. Lex Cornelia
de sicariis et ueneficis lege corporali poena de parricidio instituit.
Qui hominem occiderit cuiusque rei causa furtique faciendi causa
telum habuerit uendiderit possederit. Et qui uenenum hominis necandi
causa habuerit uendiderit possederit fecerit dederit quoquo
modo dolo malo hominis necandi causa habuerit uendiderit possederit
fecerit dederit. Quique hominem necandi causa uenenum dederit
quoquo modo dederit. Quique ueneficio hominem occiderit. Quique
hominem necandi causa uenenum coegerit dederit. Quique ueneficio
hominem occiderit. Quique hominem necandi causa uenenum coegerit
dederit. Quique ueneficio hominem occiderit. Quique hominem necandi
causa uenenum coegerit dederit. Quique ueneficio hominem occiderit.
Capitulum III. De lege Cornelia de falsis testamentis ac nummariis
siue de falsis. Lex Cornelia de falsis testamentis ac nummariis siue
de falsis. Hac lege tenetur qui falsum testimonium dixerit uel quid
falsi scripserit recitauerit signauerit signandumue curauerit. Pari
poena adficitur qui in iudicio falsum instrumentum prolatum scierit.
Falsum autem testimonium dicit qui in iudicio falsum testem dixerit.
Falsum instrumentum dicitur quod non habet ius suum. Falsum testem
dicit qui falsum testimonium dixerit. Falsum instrumentum scribit
qui falsum testamentum scripserit. Falsum recitat qui falsum
testamentum recitauerit. Falsum signat qui falsum testamentum
signauerit. Falsum signandum curat qui falsum testamentum signandum
curauerit. Falsum instrumentum prolatum scit qui falsum testamentum
prolatum scierit. Capitulum IV. De lege Cornelia de sicariis et
ueneficis. Lex Cornelia de sicariis et ueneficis lege corporali poena
de parricidio instituit. Qui hominem occiderit cuiusque rei causa
furtique faciendi causa telum habuerit uendiderit possederit. Et qui
uenenum hominis necandi causa habuerit uendiderit possederit fecerit
dederit quoquo modo dolo malo hominis necandi causa habuerit
uendiderit possederit fecerit dederit. Quique hominem necandi causa
uenenum dederit quoquo modo dederit. Quique ueneficio hominem
occiderit. Quique hominem necandi causa uenenum coegerit dederit.
Quique ueneficio hominem occiderit. Quique hominem necandi causa
uenenum coegerit dederit. Quique ueneficio hominem occiderit.
Capitulum V. De lege Cornelia testamentaria. Lex Cornelia de falsis
testamentis ac nummariis siue de falsis. Hac lege tenetur qui falsum
testimonium dixerit uel quid falsi scripserit recitauerit signauerit
signandumue curauerit. Pari poena adficitur qui in iudicio falsum
instrumentum prolatum scierit. Falsum autem testimonium dicit
qui in iudicio falsum testem dixerit. Falsum instrumentum dicitur
quod non habet ius suum. Falsum testem dicit qui falsum testimonium
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scripserit. Falsum recitat qui falsum testamentum recitauerit.
Falsum signat qui falsum testamentum signauerit. Falsum signandum
curat qui falsum testamentum signandum curauerit. Falsum
instrumentum prolatum scit qui falsum testamentum prolatum scierit.
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hominem occiderit. Quique hominem necandi causa uenenum coegerit
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prolatum scit qui falsum testamentum prolatum scierit. Capitulum
XXXVI. De lege Cornelia de sicariis et ueneficis. Lex Cornelia de
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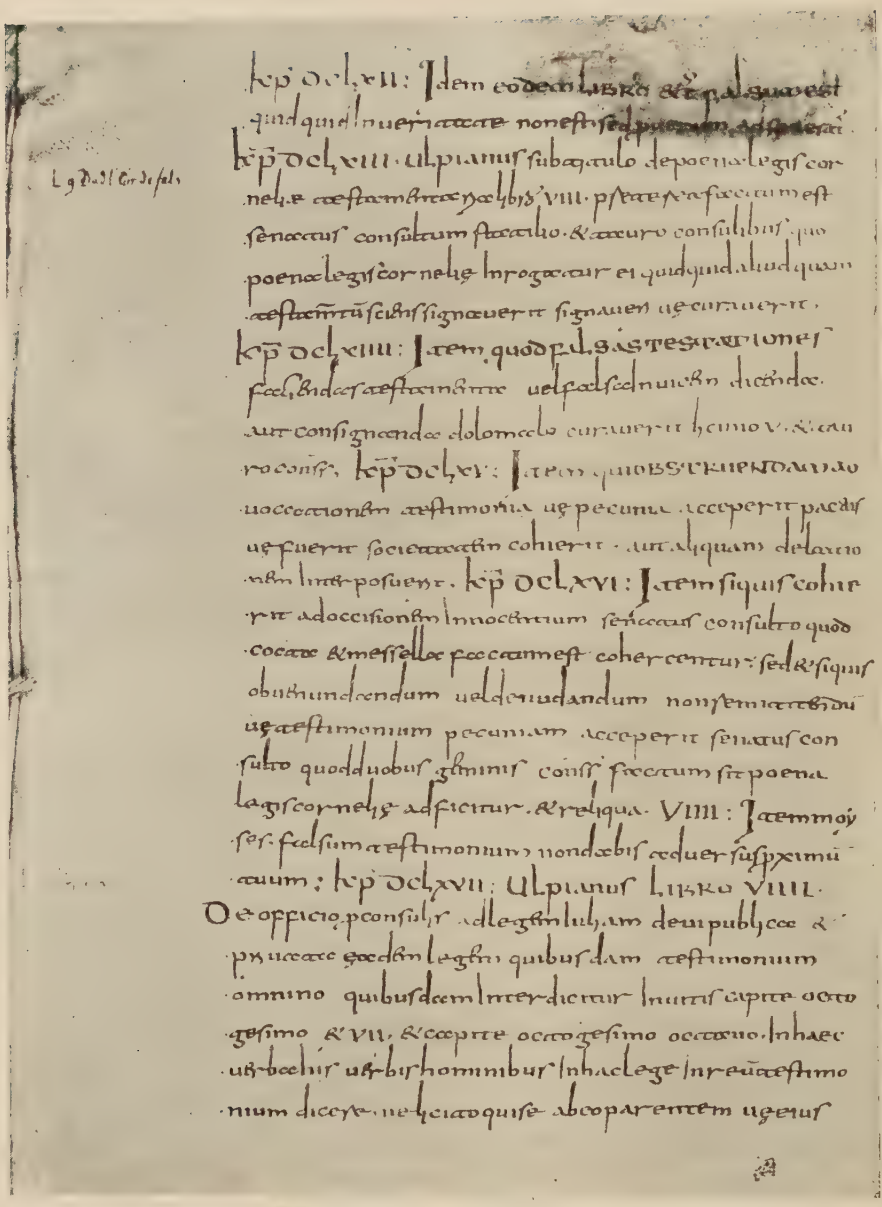
[iniusta insurgentes aduer]sus eum facietis ei sicut uoluit
mal[e]fa[ce]r[e] et deletis malum de medium uestrum
et ceteri audientes timebunt nec audebunt hec mala
facere inter uos: KP̄ DCLVIII: PAULUS LIBER SIN
gulari de poenis omnium legum sub titulo ad lege iu
liam de adulteris qui falsum testimonium dixerint
ꝑinde tenebitur hac si lege cornelia testamentaria
damnatus esset. kp̄ dclviii: PAULUS liber senten
tiarum quinto sub titulo de testibus et de questionib3
hi qui falsum uel aliqua testimonia dixerunt, uel
utriusue parti ꝑdiderunt aut in exilium aguntur,
aut in insulam relegantur aut curia submouetur,
KP̄ DCLX: IDEM LIBRO AD LEGEM CORNELIAM
de sicariis et beneficis lex corporalia penam depor
tationis infigit ei qui hominé occiderit eiusque rei
causa furtiqꝫ faciendi cum telo fuerit. et quiue
nenum hominis necandi causa habuerit uendiderit
parauerit falsum ue testimonium dixerit quo quis
periret mortis suę causam prestiterit que omnia fa
cinora in honestiores poena capitis uindicare pla
cuit humiliores uero aut in crucem tolluntur aut bes
tiis subiciuntur: kp̄ dclxi: PAULUS LIBER SENTEN
tiarum V, sub titulo ad legem corneliam testamen
taria hii qui ob falsum testimonium phibendum pe
cuniam acciperit dederit iudicem uꝫ ut sententiā
ferat uel non ferat corruperit corrumpendum
uꝫ curauerit humiliores capte puniuntur hones
tiores publicatis bonis cum ipso iudicem in insulam
deponantur

Line.

2. deletis, *read* delebitis, medium *as* medio.
4. Liber, *read* libro.
5. lege, *read* legem.
6. dixerint, *read* dixerit.
7. hac *for* ac.
8. liber *for* libro.
9. lib. 5, tit. 15 (*reference to Paulus*) *on margin by other hand.*
10. falsum uel aliqua, *read* falso uel uarie (*Paulus*).
11. utriusque, *read* utrique (*V. W.*).
13. *After* libro *M. supplies* sententiarum quinto sub titulo. lib. 5, et Tit. 23 (*reference to Paulus*) *on margin by later hand.*

Line.

14. beneficis=ueneficis; *for* corporalia *read* cornelia (V. W.); *for* penam poenam.
15. infigit *for* infligit.
16. furtiqꝫ, *read* furtiue.
19. suꝫ, *read* ue (*W.*). que = quae.
20. uindicare, *read* uindicari.
22. Liber, *read* libro. Tit. 25 (*reference to Paulus*) *on margin by later hand.*
23 *and* 24. testamentaria, *read* testamentariam.
24. hii, *either omit or* (*as Huschke*) *read* is.
27. capte = capite.
28. iudicem, *read* iudice.
29. deponantur, *read* deportantur (*Paulus*).



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KP̄ DCLXII: Idem eodem libro et T̃ falsum est quidquid in ueritate non est. sed ꝑ uerum adseuerat̃; KP DCLXIII, ULPIANUS sub titulo de poena legis cor neliae testamentaria libro VIII. preterea factum est senatus consultum statilio. et tauro consulibus quo poena legis cornelię inrogatur ei quidquid aliud quam testam̄tū sciens signauerit signaueri uę curauerit, KP̄ DCLXIIII: ITEM QUOD FALSAS TESTATIONES faciendas testamenta uel falsa inuicem dicenda aut consignanda dolo malo curauerit licinio V, et tau ro conss̄, kp̄ dclxv: Item qui OBSTRUENDAM ad uocationem testimonia uę pecunia acceperit pactus uę fuerit societatem cohierit. aut aliquam delatio nem interposuerit, KP̄ dclxvi: Item si quis cohie rit ad occisionem innocentium senatus consulto quod cocta et messella factum est cohercentur. sed et si quis ob uenundandum uel denudandum non remittendū uę testimonium pecuniam acceperit senatus con sulto quod duobus geminis conss̄ factum sit poena legis cornelię adficitur. et reliqua. VIIII: Item moy ses. falsum testimonium non dabis aduersus ꝑximū tuum: KP̄ dclxvii: Ulpianus LIBRO VIIII.

De officio ꝓconsulis ad legem iuliam de ui publica et priuata ęadem legem quibusdam testimonium omnino quibusdam interdicitur inuitis capite octo gesimo et VII, et capite octogesimo octauo. In haec uerba his uerbis hominibus in hac lege in reū testimo nium dicere. ne licito qui se ab eo parentem uę eius

Line.

1. T = titulo.
2. uerum, *read* uero. adseuerat, *read* adseueratur.
3. L. 9 D. ad l. cor. de fal (*reference to Digest*) *on margin by later hand.*

3 *and* 4. *Instead of the whole of line 3 and 4 till* libro VIII, *Blume has* Ulpianus libro octauo [de officio proconsulis] sub titulo de poena legis corneliae testamentariae.

6. quid quid *read* qui quid.
7. testam̄tū=testamentum. *After* sciens, *supply* dolo malo falsum (*Digest*). signaueri, *read* signari.
8. quod, *read* qui ad (*Digest*).
9. uel, *read* ue.
10. curauerit, *read* coierint *Digest.*
11. obstruendam, *read* ob instruendam (*Pithou*).
12. pecunia *read* pecuniam.

Line.

13. societatem, *read* societatemue; cohierit = coierit.

13 *and* 14. delationem, *M. has* de ea re pactionem; *Huschke* obligationem (from *Digest*).

14 *and* 15. cohierit = coierit.

15. occisionem, *read* accusationem (*Pithou from Digest*).
16. cocta = cotta. messella = Messalla.
17. *Instead of this line, read* ob denuntiandum uel non denuntiandum remittendum (*Cujas*).
19. sit, *read* est.
23. *After* proconsulis *supply* sub titulo.
24. legem *for* lege.
26. *Before* in haec *repeat* capite octogesimo octauo *added by Lachmann.*
27. uerbis *omit, or with Lachmann read* uero. In hac *omit* in.
28. licito, *read* liceto; *and* parentem, parente.

Liber · xv · capm libr[a]m[us] Liber accuerit · quinq;
Impubes est q[ui] coram In integrum restituj non est ·
quinq; In mancipi custodiæ q[ui] publice cecidit · quinq; de
pugnandi causa cæcus factus erit · quinq; bestiæ
depugnare locauit · Locauerit p[ro]hib[et]a quamquam cu-
landi causa cadu[m] bum missus est · impedire ne corpora
quæstum faciat fecerit · quinq; ob testimonium dicendi
pecuniam acceperit · Iudex accusetur · neue quis eorum
hæc lex in p[ro]ximo testimoniu dicat · capite · octogesimo septimo his hominib[us] In num In reum testimoniu
nisi cum quibus mos est · Reppulerit uere cognationem
contra causa · quinq; socia · gnis utrum cui p[ro]ximus quisq;
erit · Reliqua · Lex · DCLXVIII · Paulus · Libro sen
tentiarum · Subtractum · de tutela · Qui
suscepto · curatore · relicto · minore · quod · curator
de domo eduxit · uel nisi grauiter · infamem · aut
In temperantem · uel nisi humiliter · In famem · aut
In temperantem · non placeat · testibus · sum · eunte · qua
hæc · exp[re]hendebat · Reprimatur · sisum · ad finem · uel
cognatum · Inum · testes · In terrogari · non possunt ·
aduersus · In uitum · parentes · Reprehendi · tamquam · bo-
nis · uolentes · cedat · testimonium · cedunt · nisi · diuisum · qua
re · In uestes · testimonium · necessitudo · p[ro]fectum · ple-
rumque · consumpsit · Explicit · Paulus · de · tutela ·
Incipit · testimoniu · non · admittendo · decimo ·
Incipit · de · deposito · moyses · dicit ·
Lex · DCLXVIII · Si · aliquid · dabit · p[ro]ximo · suo · ad · custodiendum · Exod. 22. 7.
aut · asseruandum · et · furto · ablatum · fuerit · de · domo · hominis ·
si · inuenitur · qui · furatus · est · reddet · duplum · quod · si

liberto uę cuius eorum libertus libertauerit. quiuę
inpuber erit quiuę eorum in integrum restitutus non est.
quiuę in uinculis custodiaquę publica erit. quiuę de
pugnandi causa auctoratus erit. quiuę bestias
depugnare locauit. locauerit preterquam quiacu
landi causa ad urbem missus est erit palā uę corporē
questum faciet fecerit quiuę ob testimonium dicendū
pecuniam accepisse iudicatus erit. neue quis eorum
hac legem in reum testimoniū dicat capite octoge
simo septimo his homines inuiti in reum testimoniū
nec dicunt qui sobrinus est ei reo ꝑpiore uere cognatione
coniunctus. quiue socer gener uitricus priuignusque eius
erit, et reliqua: Kꝑ dclxviii, PAULUS LIBRO SEN
tentiarum sub titulo de testib3 et questionib3
susceptos testes et eos uel maximę quod accusator
de domo eduxit uel uitę humilitas infamauerit
interrogari non placuit testibus enim et uitę qua
litas expectari debet. et dignitas si sint adfinem uel
cognatum inuiti testes interrogari non possunt
aduersus se in uicem parentes et liberi, itemque liberti
nec uolentes ad testimonium admittendi sunt quia
rei hi uere testimonium necessitudo psonarum ple
rumquę corrumpit: EXPL TITULUS DE FAMILIA
ris testimoniū non admittendo decimo
INCIPIT DE DEPOSITO MOYSES DICIT.
Kꝑ dclxviii: Si aliquid dabit ꝑximo suo argentū
aut uas seruare et furatum fuerit de domo hominis
si inuenitur qui furatus est reddet duplum, quodsi

Line.

1. liberto uę .... libertāuerit, *read* (*with M.*) libertoue cuius eorum libertiue libertaue liberauerit.
2. impuber, = impubes. *After* quiuę, *M. inserts* iudicio publico damnatus est qui (*Digest*).
4. *Before* bestias *insert* ad (*Pithou*).
5. locauit, *read* se locauit.
5 *and* 6. quiaculandi, *read* qui iaculandi.
7. fecerit, *read* feceritue.
8 *and* 9. neue .... dicat. *M. changes to* nec uolens .... dicit.
9. legem, *read* lege.
10. homines *omit* (*M*).

Line.

11. nec dicunt, *read* ne dicunto, (*Lachmann*); *for* uere, ue.
12. priuignusque, *read* priuignusue.
14. *After* sententarium, *read* v.
15. susceptos, *read* suspectos, *and for* quod, quos.
17. testibus, *read* in testibus.
18. expectari, *read* spectari. si sint, *omit and before* ad finem *insert* in (*V.*)
20. *After* itemque, *Huschke inserts* patroni et.
22. hi uere, *omit* hi *and read* uerae.
23. testimoniū = testimonium.
26. aliquid, *read* aliquis. Exod. 22. 7 (*Biblical reference*) *on margin by later hand.*

non fuerit inuentus sur accedat huiqui[illegible]
susceperat ante dominum & iurauit nichil se ex quib⁹
egisse de omni re commodate proinde sui & liberi sunt.
Ep̄ dcl. xx. ait. Odestimus libr. odiffer entia inter
secundo de deposito uel commendato. Commodatario
dicto committit est culpa imprestanda cogitur. quinto
de deposit committit. dolo non & eam de culpam
condemnari dut. est commodatum enim contractus quia
utrisque conuenit. utilitas hinc inde unumq;
prestatur. In deposito uero contrahit depanentis utilitas
uertitur. tabi dolus. tantum prestatur. sed in contractu
quoque pecuniarum iuris iste regule custoditur. sicut in
hiis duobus iudicio & in actionibus periculum & dolus & culpa
de ducenda. quia in utrisque contrahitur utilitas inter-
uenit. In mandato autem solo iudicio dolus non etiam culpa
utilitas. In administratione uero utrius
patur. In hoc missa est. quinto commodatum dominum
non sit. In primis alterius ipsius dolum. alterius culpam
culpam condemnatur. In actione depositi conuenitur
cui nec sum nomine cepit eundem iudicem utilitates
expendat. adhuc cuius commodatum est. In prone cui
nasum & actionem intendit impensas tamen necessa
rias iure prosequitur. quas forte ingressum uel alias la
boratum impendit. Respondit depositario
Ep̄ dl. xxi. Si ut ypocrita dominus dominabat
fustractionem quamuis aput quem res deposita est
interesse oblimpensas in eas facere tamen ei pertinere. Sus
uas cui res commodatas sit furas experiri debebit

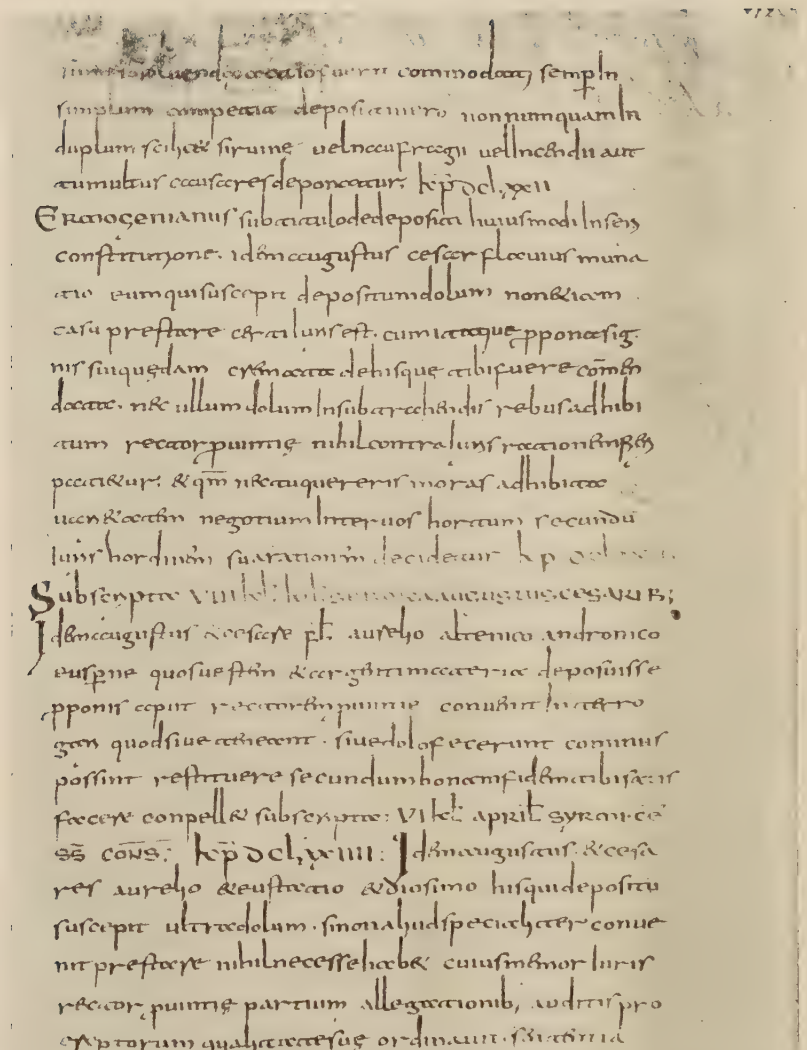
non fuerit inuentus fur accedat his qui comm[end]atum
susceperat ante dominum et iurauit nihil se nequiter
egisse de omni re comendata ꝓximi sui et liberabitur.
Kp̄ dcLxx, MODESTINUS libro differentiarum
secundo de deposito uel commendato: Comendati iu
ditio conuentus est culpam prestare cogitur qui uero
de depositi conuenitur, de dolo non etiam de culpam
condemnandus est. comodati enim contractus quia
utriusque contrahentis utilitas interuenit. utrumq3
prestatur in depositi uero causula deponentis utilitas
uertitur tibi dolus tantum prestatur. sed in ceteris
quoque partibus iuris ista regula custoditur. sic enim et
in fiducię iudicio et in accionem rei uxori et dolus et culpā
deducitur quia utriusque contrahentis utilitas inter
uenit in mandati uero iudicio dolus non etiam tutoris
utilitas in administratione uersatur depositi dam
natus infamis est, qui uero commodati damnatur
non fit infamis alter enim ꝓpter dolum alter ꝓpter
culpam condemnatur actione deposito couuentus
ciuariarum nomine aput eundem iudicem utiliter
experitur adhis cui res comendata est inproue ciua
riarum exactionem intendit inpensas tamen necessa
rias iure ꝑsequitur quas forte in ęgrum uel alias la
borantem inpenderit. RESPONDIT DEPOSITA
Kp̄ dLxxi. Si subripiatur dominus domui habet
furti accionem quamuis aput quem res deposita est
intersit ob inpensas in rem factas se retinere. ius
uero cui res commodata sit furti experiri debebit

Line.

1. accedat, *read* accedet.
2. iurauit, *read* iurabit.
5. *After* secundo *supply* sub titulo. uel commendendato, *read* et Commodato. Comendati *read* commodati (*W.*).
6. est, *read* et.
7. de depositi, *omit* de: culpam, *read* culpa.
8. comodati, *read* commodati, *and for* contractus, contractu (*V. W.*).
10. causula *read* causa sola (*V.*).
11. tibi, *read* et ibi (*V. W.*)
13. iudicio, *read* iudicium; uxori *read* uxoriae; et dolus, *omit* et; *for* culpā *read* culpa.

Line.

15. iudicio, *read* iudicium. *After* etiam *supply* culpa deducitur quamuis singulariter denotare liceat in tutelae iudicium utrumque deduci cum solius pupilli (*V. W.*).
16. uersatur. *read* uersetur.
19. deposito, *read* depositi (*Digest*).
20. ciuariarum, *read* cibariorum.
21. adhis, *M.* at is; *for* commendata *read* commodata; *for* inproue, inprobe.
21 *and* 22. ciuariarum = cibariorum.
L. 23. D. depos (*reference to Digest*) *on margin by later hand.*
24. Respondit deposita, *read* res deposita.
25. domui, *read* dumtaxat (*Schulting*).
26. *After* quamuis *supply* eius (*V. W.*).
27. se retinere, *read* rem retinere (*Edd.*). ius, *read* is.



— 31 —

Si modo soluenda actio fuerit commodati semp in simplum competit depositi uero nonnumquam in duplum scilicet si ruinę uel naufragii uel incendii aut tumultus causa res deponatur, Kp̄ dclxxii

Ermogenianus sub titulo de depositi huius modi inseri constitutione. idem augustus cesar flauius muna tio eum qui suscepit depositum dolum non etiam casu prestare certi iuris est. cum itaque ꝑponas ig nis sui quędam cremata de hisquę tibi fuere comen data. nec ullum dolum in subtrahendis rebus adhibi tum rector ꝓuintię nihil contra iuris rationem fieri patietur, et qm̄ nectu quereris moras adhibita uarietatem negotium inter uos hortum secundū

Siuris hordinem sua rationem decidetur, Kp̄ dclxxiii Subscripta viii Kł Iul. Serdica Augustus cesarib3

Idem augustus et cesare fł aurelio altenico andronico eus pne quos uestem et argenti materia deposuisse ꝑponis aput rectorem ꝓuintię conuenit interro gari quod siue teneant. siue dolo fecerunt cominus possint restituere secundum bonam fidem tibi satis facere conpellet subscripta: vi Kł april Syrmi. c̄e s̄s̄ conss: Kp̄ dclxxiii: Idem augustus et cesa res aurelio et eustatio et diosimo his qui depositū suscepit ultra dolum. si non aliud specialiter conue nit prestare nihil necesse habet cuius memor iuris rector ꝓuintię partium allegationib3 auditis pro ereptorum qualitate suę ordinauit. sententia subscripta xiii Kł nōu appiaria;

Line.

1. Soluenda, *read* soluendo (*Pithou*); actio fuerit, *read* fuerit actio.
5. de depositi, *omit*, de (*B. index*), *or with Huschke read* deposito. inseri, *read* inserit.
6. constitutione, *read* constitutiones. Augustus cesar flavius, *read* Augg [et]. Caess. Fl. [i.e. Flavio].
8. casu, *read* casum.
9. sui, *read* ui.
12. nectu, *read* necti.
13. uarietatem, *read* uarietate: *for* hortum ortum.
14. rationem, *read* ratione.

Line.

15. Augustus cesarib3, *read* Augustis conss. (*Cujas*).
16. Augustus et cesare, *read* Augg. et Caess. (*B. index*).
17. eus, *read* eos: pne, *read* penes: materia, *read* materiam.
19. *For* quod, *read* qui eos (*Huschke*); *for* fecerunt, fecerint. cominus = quominus.
21. *and* 22. Syrmi. c̃e s̃s̃, *read* Sirmi Caess.
22. *For* Augustus, Augg. (*Cujas*).
23. eustatio = Eustathio; his = is.
24. allegationib; = allegationibus.
27. sue, *read* sua; ordinauit = ordinabit. sententia = sententiam.

Tit. 2. Tit. 12.

Tit. XV. Idem. Ulpianus. Lib. VIII.

Ad edictum. Quae dicitur illa quidolum. A deposito non restituam suo nomine conuenitur. adeus cum infamie periculo restitutionem urgeatur. sed parcit id. decem. II. come die. Cod. eod. tit. XVI. Paulus. Lib. Sententiarum. Sub titulo secundo. De deposito deponere possumus. aput alium id quod nostrum est. uel alienum. A deposito nomen est quasi diu positum seruandum est. quod breue tempus. custodiendum datur. deponere uidetur. quia mora in ruina. Incendii naufragii. aput alium custodie causa deponit. deponere uidetur. Et hi qui sua peccatum habent. uel minus. idoneam custodiam domus uel um. Locus tonum. timens. aput aliquem res custodiendum commodauit. si sacellum uel ergastulum deposuero. et hi ponens. quem deposito rum fuit meli nitro conuenti sunt. Et deposito. et furti actio mihi. in eum competit. obrem. deposita est dolus. eam tam per transeat. Inludi eo deposito. hi mora et fructus ue nium. et usure. eo deposite. prestantur. si quis reponens. deposite aput alium deposuerit. eam ipse dirripuerit. quam hi qui apud eum deposuit. utile actionem. deposito habere possunt. si pecuniam de posuero eam hunc quem. tibi commisero. mutuam negotiunder tur. quam deposita mihi hoc pen culo tradiderit. si sum aput te deposite uendiderit. eamque redimeris. post quam perdiderit. sine tua culpa. dolo perpetuum in deposito actionem tenebitur. Et causa depositi. Legum duodecim tabularum. Indu

Kp̄ dclxxv: Idem Augustus et cesares vii
et quadrat ille qui dolo malo posito non restituit
suo nomine conuentus ad eius cum infamę periculo
restitutionem urguetur scripta id̄. decem̄. ii. come
dia ccs cons̄. Kp̄ dclxxvi: PAULUS LIB. SENTEN
tiarum sub titulo secundo de deposito deponere
possumus aput alium id quod nostri iuris est uel alieni
depositum est quasi diupositum seruandum est quod
breue tempus custodiendum datur deponere uidetur
qui in metu ruinę incendii naufragii aput alium cus
todie causa deponit. deponere uidetur, et his qui sus
pectam habent uel minus idoneam custodiā domus
uel uim latronum timens aput aliquem res cus
todiendam commodat. si sacellum uel argentum
deposuero. et his poenę quem depositum fuit me in
uito contrectauit. et depositi et furti actio mihi
in eum conpetit ob res depositas dolus tantum pres
tari solet in iudicio depositi hec mora et fructus ue
niunt, et usure reideposite prestantur. si quis
rem poenę se posita aput alium deposuerit. tam
ipse direptam, quam his qui aput eum deposuit utilē
actionem depositi habere possunt, si pecuniam de
posuero eam hanc quem tibi cōmissero mutuam
magis uidetur quam depositam hac, p hoc peri
culo tuo erit, si rem aput te deposita uendideris
eamque redimeris post quam pdideris semel amisso
dolo perpetuam depositi actionem teneberis,
et causa depositi legem duodecim tabularum indu

Line.

1. Augustus et cesares, *read* Augg. et caess.
1 *and* 2. uii et quadrat ille, *read* septimiae Quadratillae (*V. W.*).
2. posito, *read* depositum.
3. infamę = infamiae.
4. restitutionem, *read after* eius *in line* 3. scripta id. decem, *read* subscripta prid. idus decembres (W.).
4 *and* 5. II comedia, *M. has* Nicomedia.
5. ccs, *read* C.C.
6. secundo, *read after* libro *in previous line.*
9. *Before* breue *supply* ad.
10 *and* 11. custodie = custodiae.
11. his = is.
12. habent, *read* habens (*V. W.*).
13. res, *read* rem,
14. Lib. 2, Tit. 12 (*reference to Paulus*) *on margin by later hand.*

Line.

14. commodat, *read* commendat; sacellum *as* sacculum (*Digest*); *after* argentum *supply* signatum (*Paulus*).
15 his = is. poene = penes.
18. hec, *read* ex (*V. W.*).
19. usure = usurae. deposite = depositae.
20. poenę = penes; posita, *read* depositam.
21. direptam, *read* directam. his = is.
23. eam hanc.....comissero. *M. reads* eamque...permisero, *Blume* eaque uti tibi permisero.
24. depositam, *read* deposita. hac = ac.
25. deposita, *read* depositam.
26. redimeris, *read* redemeris. post quam, *M. omits* quam; amisso, *read* admisso.
27. perpetuam.....actionem, *read* perpetua .....actione (*W.*).
28. et, *read* ex, *and* legem, lege.

plum ꝛ ꝛ ꝛ

plum actio datur edictum pretoris in simplum: Kp̄ dclxxvii: GREGORIANUS LIBRO iiii. sub ti tulo de deposito Imp̄ alexander. ā mestrio militi incursu latronum ornamenta deposita aput inter prefectum ab eis perierunt detrimentū ad heredes eius qui depositum accepit, qui dolum tantum prestare debunt non ptinet, quod si ex pretexto latrocinii commissi resque in potesta te heredi sunt non restituntur. tam depositi quā exibendo$^{\bar{u}}$ actio. sed in rem uindicatio conpetit, prop. vii d̄ Kł iuł maximiano bis et urbano· CC' Kp̄ dclxxviii: PAULUS LIBER RESPONSOR v, sub titulo· ex locato et conducto imp. antoninus Iulio agripino dominus horreorum periculum sui maioris uel efracture latronum prestare non cogitur his cessantib; si quid expositis rebus inlesis extrinsecus horrei damnum depositorum sarciri debet. prop. IIII NON NOU· antonino· III consł' Kp̄ dclxxviii: PAULUS R/ SATIS PREPOSITĀ constitutionem declarare his qui horrea locant maiorem uim inputari non posse: EXPL TITULO de deposito unde: KP̄ DCLXXX, INCIP· DE ABE geatoribus moyses dicit, Si quis inuolauerit uitulum aut ouem et occiderit aut uindederit quinque uitulus restituere pro uitulum unum quattuor oues ꝑ oue una quod si non habet unde reddat uenundetur ꝑ furto. Kp̄ dclxxxi·

PAULUS LIBER SENTENTIARUM SUB TITULO

Line.

1. edictum, *read* edicto.
5. inter prefectum, *read* interfectum (*V.*, *W.*).
7 *and* 8. ex pretexto, *omit* ex *and read* praetextu (*Just.*).
9. heredi, *read* heredis (*W.*).
10. exhibend$^{\bar{u}}_{o}$, *read* ad exhibendum (*Just.*); *before* in rem, *insert* et.
11. d = die, *omit*; *for* Maximiano, *read* Maximo. CC = conss.
14. agripino = Agrippino; sui, *read* uis.

Line.

16. expositis, *read* depositis (*Just.*).
17. horrei, *read* horreis perit (*V.*, *W.*).
18. III *should be* IIII.
22 *and* 23. abegeatoribus, *read* abactoribus. *Huschke retains* abigeatoribus.
25. *For* uitulus *read* uitulos; *for* restituere, restituat (*V.*, *W.*) *or* restituet (*M. after* ἀποτίσει Sept.).
28. Liber, *read* libro; *after* sententiarum *add* quinto.

decchgrecconibus xatrocef pecuniam abeacceperit plorum
adgladium uel inmetallum [illegible] inopus
publicum damnatur xatrocef autem sunt qui equor &gregib
ouium de stabulo uel de pascuis habigunt uel si id fecerint
aut a feris conducta emanu faciunt. Ep̄ DCLXXXII
De paulus eodem libro & capitulo. abegi qui ad eandem quebonet uel ca
pras de eadem pascuis quinque. abegi sunt quidquid uero in
eo numero fuerit ablatum imponatur furi pro
qualitate eius aut in duplum aut in triplum condemnetur
aut fustibus cesus inopus publicum uni us annida
tur. aut sub poena uinculorum domino restituatur.
Ep̄ DCLXXXIII. De paulus eodem libro et titulo
Si de pecore de quibus furtum factum est. abegi sunt. de fo
rum premia tribuenda est. ad quem locum haec coniungitur. in duplum
uel in triplum furti more damnatur. Ep̄ DCLXXXIIII
De paulus eodem libro et titulo. Quibus
uel equum errantem quod ueluti aliud pecus abduxerit fu
rem magistratum quam abigeatus poena constituit placuit
Ep̄ DCLXXXV. Paulus libro singulari de poenis
praetorum. Fabriculo de abigeis dicit. cum duriu
abigei damnantur. ad gladium traduntur. itaque
diuus pius ad concilium baeticae. ipsique pecora de quibus
haec gesta sunt. abegis adsignum premi tribuendum esse. & statuit
fuerit in duplum uel quadruplum condemnandus.
Ep̄ DCLXXXVI. Ulpianus libro octauo de officio
proconsulis. Fabricula de abigeis. abigei puniendi sic
diuus adnotauit. rescripsit concilio baeticae. abigei cum de

de abgeatoribus atroces pecorum abactores plerūq:
ad gladium uel in metallum nonnumquam autem in opus
publicum dantur atroces autem sunt qui equos et greges
ouium de stabulo uel de pascuis habigunt uel si id sepius
aut a ferro conducta manu faciunt, Kp̄ dclxxxii
Idem paulus eodem libro et titulo, abegeatores sunt
qui unum equū uel duas equas totidemque boues uel ca
pras decem porcus quinque, abegerint quidquid uero in
tra hunc numero fuerit ablatum inponat furti pro
qualitate eius aut in duplum aut in triplum conueni
tur aut fustibus cesus in opus publicum unius anni da
tur, aut sub paena uinculorum domino restituetur.
Kp̄ dclxxxiii; Idem Paulus eodem Libro et titulo
Si ea pecora de quibus quis litigauerat. abegerit ad fo
rum remittendus est adque ita coniunctus in duplū
uel in triplum furis more damnatur: Kp̄ dclxxxiiii
Idem Paulus eodem libro et titulo; Qui bouē
uel equum errantem quodue aliud pecus abduxerit fu
rem magis ęum quam abegeatorem constitui placuit
Kp̄ dclxxxv, Paulus Libro Singulari de poenis
paganorum sub titulo de abigeis dixit. cum durius
abigei damnantur, et ad gladium tradantur itaque
diuus pius ad concilium beticę et ipsi qui pecora de quibus
litigabat abegit adf^{u}rum premittendus est, et si uictus
fuerit in duplum uel quadruplum condemnandis,
Kp̄ dclxxxvi. Ulpianus Libro octauo de officio
pconsulis sub titulo de abigeis abigeis puniendis. ita
diuus adrianus rescripsit concilio beticę abigei cum du

Line.
1. abgeatoribus; i *omitted before* g.
4. habigunt = abigunt.
5. a ferro. *Huschke reads* ferro aut.
7. *After* boues *add* oues.
9. *For* numero *read* numerum; *and for* inponat, in poena.
12. paena = poena.

Line.
15. adque = atque. coniunctus, *read* conuictus *(V., W.)*
23. beticę = Baeticae.
24. *For* furum *read* forum; *for* premittendus, remittendus.
25. Condemnandis, *read* condemnandus,
27. *Before the second* abigeis *insert* de.

[illegible] punitentur [illegible] dium damnari solent. puni
untur [illegible] nonnulique. sed ubi sequitur. ſ
hoc ghur mæleficii. ideoque minor [illegible] nonnumquam
temporaenum damnantur. ideoque [illegible]
ſufficere ghur poenq quod maximo huic [illegible]
rogaen rolæ uocedgladium abigei dentur. [illegible]
ctemnocatur & ancingreciur. Inobigthdo ſunt. utpriuſe-
hoc crimine aliqua poena affecauſſit. hunqm mercatu
dociopor tere reſcripti diui eodn cenſicloquitur. quaſi
graciior poenaſit mæcellni. ſi ſoraethoc ſenſit diuus
eodn cenus gladii poenæducendo ludi damnationem eſt. inter
differbriam Inter eoſquoad gladiū & eoſquad ludum
damnantur. namad gladium damnati confeſtim con
ſumuntur uelcerae Inaeamur. [illegible]
him damnati. com [illegible]
nantur. nonnunque conſumuntur. ſed & impuberes &
rudes accipere poſſunt. poſtea. palam. ſi quidem pot
quinquennium pilleos poſtea uirilium autem rudem
Indueye eſpmicatur. ſ. ſ. d. l. xxxvii. Quoties
ſcripto diui eodn cenſi ubigrauiſſime. & preſſum eſt nonubiq
peccatum eſſe poenā ubigeorum. ſ. ſ. d. l. xxxviii.
Item ulpianus libro. & titulo quis. Abigeatus autem
Inhibetur. qui pecora. de paſtu. & de fermentis ſubri
hunt. & quod eodmodo deprædantur. & abigei ſtudio
quaſi aratra. & eor chintes. quaſi diuerſe. uel boues. [illegible]
ab hoc. & ctrum ſiquis boues. ab arantibus. uel equu
Inſolitum iduce. abduxerit. dicendus est abigeus. ſi dur po
tuit. ſed & ſi porcum uel capram uel berbicem. conducun

rissime puniuntur ad gladium damnari solent, puni
untur autem durissime non ubique, sed ubi frequentiū est
hoc genus maleficii alioquin et in opus, et nonnumquam
temporarium damnantur, ideoque puto aput uos quoq;
sufficere genus poenę quod maximo huic maleficio in
rogari solet ut ad gladium abigei dentur. aut si quis
tam notus et tam grauis in abigendo fuit. ut prius ex
hoc crimine aliqua poena affectus sit hunc in metallū
dari oportere rescriptū diui adriani sic loquitur. quasi
grauior poena sit metalli nisi forte hoc sensit diuus
adrianus gladii poena dicendo ludi damnationem est auté
differentiam inter eos qui ad gladiū et eos qui ad ludum
damnantur. nam ad gladium damnati confestim con
sumuntur uel certe intra annum debet consummi. hoc
enim damnatis continetur enimuero qui in ludum dam
nantur non utique consumuntur. sed etiam pilleari et
rudem accipere possunt post inter palam si quidem post
quinquennium pilleari post triennium autem rudem
induere eis pmittitur: K$\bar{P}$ DCLXXXVII: EODEM RE
scripto diui adriani diligentissimę expressum est non ubiq;
parem esse poenā abigeorum. K$\bar{p}$ dclxxxviii'

Item ulpianus libro et titulo quis. abigei autem ꝑprię
hii habentur qui pecora ex pastu et ex fermentis subtra
hunt, et quodadmodo depręd̄antur et abigei studiū
quasi artem exercentes quas degere uel boues de ar̄mtis
abducentes ceterum si quis bouem aberrantem uel equū
in solitudiné abduxerit non est abigeus, sed fur po
tius, sed et qui porcum uel capram uel berbicem adducunt

Line.
2. frequentiū *should be* frequentius.
5. maximo, *read* maximum (*P. Faber*).
11. poena, *read* poenam.
12. differentiam, *read* differentia.
14. debet, *read* debent; consummi, *superfluous* m.
15. damnatis, *read* mandatis (*Pithou*).
17. inter palam, interuallum (*Lachmann*).
20. diligentissimę = diligentissime.

Line.
22. Item, *M. has* idem; quis. = qui supra.
23. hii, *M. has* hi; fermentis, *read* armentis (*V.*, *W.*).
24. quodadmodo, *read* quodam modo (*W.*).
25. exercentes quas degere, *read* exercent equos de gregibus (*Dig.*). ar̄mtis = armentis.
27. solitudiné = solitudine.
28. berbicem, *read* uerbecem (*M.*); ueruecem (*Dig.*).

non tam grauiter ut his qui ad maiora animalia abigent
plecti debent quamquam autem adrianus metalli poena
item operib3 uel etiam gladii presto erit adtamen qui ho
nestiori loco nati sunt non debent ad hac poena ptinere
sed aut relegandi erunt aut remouendi ordinem romę
tamen etiam bestiis subici abigeos uideamus et sanę
qui cum gladio abigunt non iniqui hac poena adficiuntur
EXPŁ DE ABIGEIS: KP̄ DCLXXXVIIII: DE INCEN
diariis XII Moyses dicit, si exiuit ignis et inuenerit
spinas et conprehenderit areas uel spicas aut campū
existimationé restituet ille qui succendit ignem3
Kp̄ dcxc. Paulus liber sententiarum sub titulo de
incendiariis qui casa aut pillā inimititiarum gratiā
incenderunt humiliores in metallo aut in opus publicū
damnantur honestiores in insula relegantur fortuita
incendia que casu uenti fuerint his uel incuriam ignem
supponentis ad usque uicini agrus euadunt. et si ex eo
seges uel uinea uel oliua uel fructifere arbores con
crementur datū dānum extimatioñ sartiatur,
Kp̄ dcxci. IDEM PAULUS EODEM LIBRO ET TITUŁ
commissum uero seruorum· si dn̄o uideatur noxę
et editione sarcitur messium sanę perdum incensores
uinearum holiuarum uę aut in metallum humiliores
damnantur aut honestiores in insulā relegantur.
KP̄ DCXCII. IDEM PAULUS LIBRO ET TITULO
Qui supra Incendiarii quidquid in oppido predandi cau
sa faciunt facile capite puniuntur
KP̄ DCXCIII. ULPIANUS LIBRO OCTAUO; DE OF

Line.

1. his, *read* hi; ad maiora, *omit* ad; abigent, *read* abigunt.
2. poena, *read* poenam.
3. item operib3. *Huschke supplies after* item, temporarii, *and reads* operis; *M., however, emends the two words to* temporari. presto erit, *read* praestituerit, (*Digest*) *and cf. V.*, prestiterit. adtamen = attamen.
3 *and* 4, honestiori, *read* honestiore.
4. hac poena, *read* hanc poenam.
5. ordinem, *read* ordine.
6. uideamus, *read* uidemus. sanę = sane.
7. iniqui, *read* inique (*V.*, *W.*).
9. XII. *Reference is to Title.* exiuit, *read* exierit (*V.*, *W.*).
11. existimationē, *read* aestimationem (*W.*).
12. liber, *for* libro; *after* sententiarum *add* quinto.

Line.

13. casa, *read* casam. pillā, *read* uillam inimititiarum, *the frequent* ti *for* ci.
14. metallo, *read* metallum.
15. insula, *read* insulam.
16. que = quae. fuerint his, *read* furentis (*V.*, *W.*), *and for* incuriam, incuria.
17. agrus, *read* agros; et si, *omit* et (*Paulus*).
18. oliua, *read* oliuae (*Paulus*). fructifere= fructiferae.
19. extimatione = aestimatione; sartiatur *for* ci.
22. *For* et editione, *read* deditione; *for* sanę, sane, *and for* perdum *read* per dolum (*Paul. Vesontius*).
26. quidquid, *M. has* qui quid, *but better Huschke's reading*, incendia (*for* incendiarii) si qui.

[illegible] secundum
[illegible] sed uane sum no-
rionum. nam quid loquar [illegible] hec dum scri-
psimus in humillimo loco sum. bestiis subiectus. Sed
quo gracio[illegible]me id fecerunt [illegible] ut certa
adficiendi sum quibus commigrandum. [illegible]
operam dum facerent plerumque ignorarent nos
In[illegible] & incauti ac negligentia uel astucia sui.

Lep DCXCIIII. Paulus libro singuLari. Depo-
nis pagenos. subtrahendo abigere dicit. Incendiarii qui
In oppido predę causa id admiserint. capite puniuntur
qui casu in suis aut alterius nullo inimicitiae incenderint le-
uius pecunie arbitrio ad quorum pertinet dignitatem
sunt ue damnum aut non coercentur. Lep DCXCV
Ulpianus libro [illegible]
In humanam occasionem [illegible]
silue sue casu sient uel [illegible]
habebo. Lep DCXCVI. Item qui est arcendus hostium
meum uel uillam meam. quo dolo quis In silua cedere
& iam cepit pecus meum pascendum quasi incendendum.
Lep DCXCVII. Item si quis in silua uoluerit ar-
bores ceciderit. aduersus eum in silua impenenerit aquilex
nebitur lege Aquilia & eum nomine inquilini ob ser-
uorum culpam. Item celebro libro xv. responsorum
refert. sed si fistulae magno cum incendi gnisque
euenerat. ad pecus uel impenenerit. Illud dicendum
aquilicio locum habere. In fabricam autem ferrariam fun-
questio. sed plerisque aquilicio locum habere uidetur.
Lep DCXCVIII. Qui lacus celsiores libro xxxvii digest
eorum scribit. si humi fistulam incendentis signis

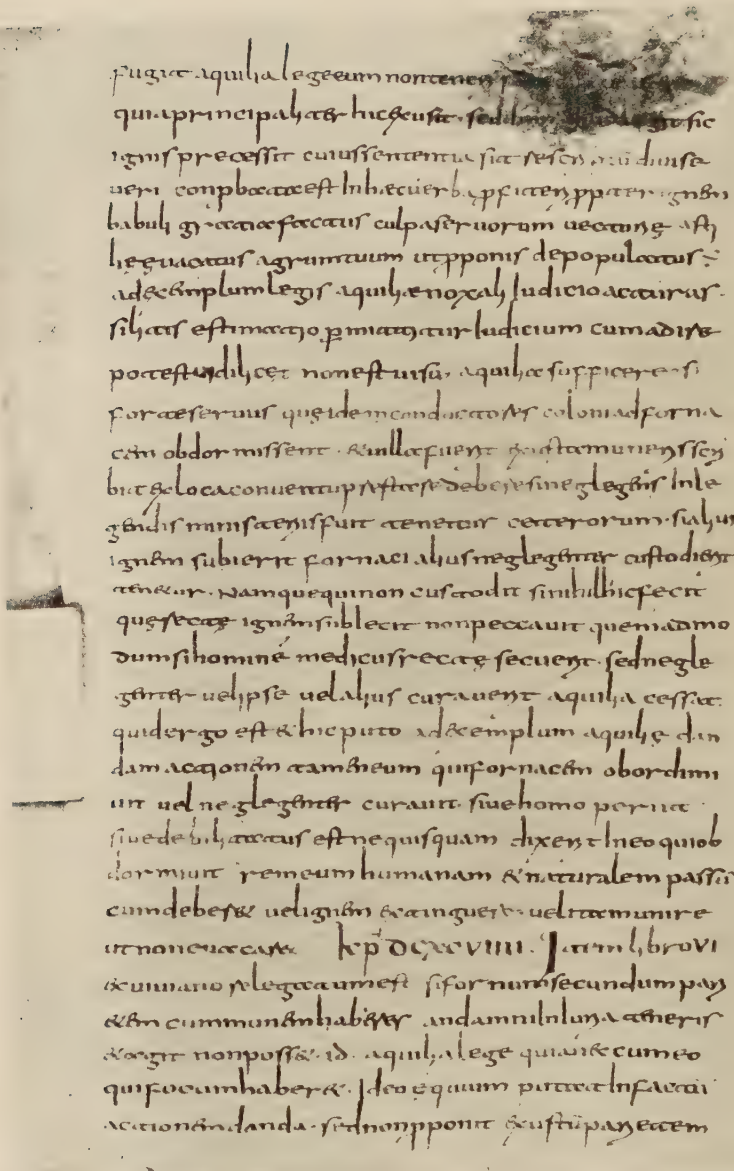
ficio [proconsulis de nau]fragiis et incendiariis lex quidem cornelia aq[ua] et igni interdicit iussit sed uarię sunt pŏn tionum, nam qui data opera in ciuitate incendium fece runt si in humillimo loco sunt bestiis subici solent. si in ali quo grado et romę id fecerunt capite puniri aut certe adficiendi sunt qui hec committunt. sed et qui non data opera incendium fecerint plerumquę ignoscitur, nisi in lata et incauta neglegentia uel lasciuia fuit.

KP̄ DCXCIIII. PAULUS LIBRO SINGULARI. de poe nis paganoR/ sub titulo de abigeis dicit incendiarii qui in oppido predę causa id admiserint. capite puniatur qui casu insulā aut uillā non inimicitia incenderint le uius fortuita enim incendia ad forum remitenda sunt ut damnum uicini sarciatur; Kp̄ dcxcv.

ULPIANUS libro ad edictum sub titulo. si fatebitur iniuriam occisam esse in simplum, et cum doceret ité si insula meā adusueris uel incenderis aquiliae accione habebo. Kp̄ dcxcvi. Item quę est et si arbustum meum uel uillam meā quod si dolo quis insula exuserit etiam capitis poenā plectitur quasi incendiarius: Kp̄ dcxcvii: Item Si quis insulam uoluerit exurere et ignis etiam ad uicini insulam puenerit aquilia te nebitur lege uicini etiam non minus inquilinis ob res eorum exustas et ita Labeo libro xv. responsorum refert. sed si stipulā in agro tuo incenderit ignisque euagatus ad ꝑelium uicini puenerit et illud exuserit aquiliae lex locum habeat an in factum actio sit fuit questio. sed plerisquę aquilia lex locum habere n̄ uidetur. Kp̄ dcxcviii. ET ita celsus libro xxxvii diges torum scribit, id enim si stipulam incendentis ignis

Line.

1, *After* proconsulis *insert* sub titulo.
2. interdicit, *dots above and below the last letter to indicate that it ought to be omitted.*
2. uarię *read* re uarie (*W.*).
2 *and* 3. pŏntionum, *read* puniti.
5. grado, *read* gradu; *and for* puniri, puniuntur.
6. *Blume supplies before* adficiendi, deportationis poena (*cf. Digest* in insulam deportantur); *M. leaves* hiatus. et, *read* eis (*M.*).
12. inimicitia, *read* ex inimicitiis (*V.*, *W.*)
13, remitenda, t *wanting*.
14. uicini, *read* uicinis (*W.*)
15. *After* libro *insert* XVIII (*B. index and W.*).
16. *For* iniuriam, *read* iniuria; *for* occisam, occisum (*V.*), *for* doceret, diceret (*M.*), condiceret (*Huschke*). ité, *it might also read* tib.
17. *For* insula, *read* insulam; adusueris = adusseris.; accione *read* actionen.
18. Itemquę *read* Idemque,
19. insula, *read* insulam. exuserit, s *wanting*.
20. poenā, *read* poena.
23. uicini, *read* uicino.
25. incenderit, *read* incenderis (*V.*).
26. ꝑelium, *read* praedium. exuserit, *read* exusserit.
27. aquiliae, *read* Aquilia.
28. n = non.
30. id, *read* ait (*W.*).



— 38 —

fugit aquilia lege eum non teneri [sed in factum agendū]
quia principaliter hic exusit sed dum aliud legit sic
ignis precessit cuius sententia sit rescriptū diui se
ueri conp̃bata est in haec uerba p̃fiteri p̃pter ignem
babuli gratia factus culpa seruorum uecturię asti
lię ęuacatus agrum tuum ut p̃ponis depopulatus ⌢
ad exemplum legis aquiliae noxali iudicio acturas
si litis estimatio p̃mittitur iudicium cum adire
potest uidilicet non est uisu, aquilia sufficere si
forte seruus quę idem conductores coloni ad forna
cem obdormissent. et uilla fuerit exusta muneris scri
bit ex loca conuentu prestare debere si neglegens in le
gendis ministeriis fuit tenetur ceterorum. si alius
ignem subierit fornaci alius neglegenter custodierit
tenetur. namque qui non custodit si nihil hic fecit
quę rectę ignem subiecit non peccauit quem ad mo
dum si hominé medicus rectę secuerit sed negle
genter uel ipse uel alius curauerit aquilia cessat.
quid ergo est et hic puto ad exemplum aquilię dan
dam actionem tamen eum qui fornacem obordimi
uit uel neglegenter curauit. siue homo periit
siue debilitatus est ne quisquam dixerit in eo qui ob
dormiuit rem eum humanam et naturalem passū
cum deberet uel ignem extinguere uel ita munire
ut non euacaret: K p̄ dcxcviii. Item libro vi
ex uiuiano relegatum est si fornum secundum pari
etem cummunem haberes an damni iniuria teneris
et agit non posset. id, aquilia lege quia nec cum eo
qui focum haberet. ideo equium putat in factū
actionem dandā. sed non p̃ponit exustū parietem

Line.

1. fugit, *read* effugit (*M.*).
2. *After* quia *add* non (*V.*, *W.*); exusit= exussit; *for* legit *read* egit.
3. precessit, *read* processit; *for* sit rescriptū *read* et rescripto.
4. p̃fiteri, *Pithou has* profitere.
5. babuli, *read* pabuli *and before it supply* qui (*Scaliger*). uecturię uetuiae.
6. ęuacatus = euagatus; ⌢ = est.
7. acturas, *M.* actura.
8. cum adire, *M. reads* consistere, *and suggests as alternative* iudicem tum adire potes.
9. uidilicet = uidelicet; uisu, *read* uisa.
11. obdormissent, *read* obdormisset; muneris, *read* Neratius (*Dig.*).
12. loca, *read* locato (*cf*, *V.*, *W.*); conuentu, *read* conuentum.

Line.

13. tenetur, *omit* (*V.*, *W.*); ceterorum, *read* ceterum (*Dig.*).
14. subierit, *read* subiecerit (*V.*, *W.*).
15. *Before* tenetur *supply* an; si nihil hic, *omit* si *and* hic.
16. quę, *read* qui; rectę, *read* recte.
17. rectę *read* recte.
20. tamen, *read* tam in; *before* fornacem *insert* ad.
20 *and* 21. obordimiuit, *read* obdormiuit.
21. *After* uel *supply* neglegenter custodit quam in medicum qui (*V.*, *W.*).
22. ne, *read* nec (*W.*).
25. euacaret, *read* euagaretur.
26. uiuiano, *some retain; M. reads* Vibiano.
27. cummunem = communem.
28. agit non posset, id, *read* et ait [Proculus] agi non posse.
29. ideo, *read* et ideo (*V.*, *W.*); equium, *read* aequius (*Dig.*).

[illegible] non damnum mihi damnum dederit
[illegible] mortuum non hi deae
me[illegible] [illegible] lex DCC Idem in p. actum
perare forte assirmum de hoc rescripsit pendere. nisi quis
dixerit damnum non fecit sufficere cum onere. sed si
quis seruilnquilinum insulam deuserit ut ex arsura re
nouetur unum responderit lege aquilia seruo eorum no
mine dominus ex iudicio conueniendum esse colono
uestm dominum eenem negare procul dubio. Et
cum colonus seruum uilicum deuserit colonum uel locato
lege aquilie actione conuenire colonus seruus possit ne ex lege dederit
Si uno iudicio peremptum iudicium alterum amplius non
agendo. lex DCCI. Item celsus libro xxvii digestorum
scribit sicut aper mihi et actuar adiudicasset. tamen
deuserit quod dominus egit. competere legis aquilie
actionem. Nam quod speculum quasi aper dominum
non secuerit sed dissipauerit esse dictum. Nam aper eum
perfodiendo secuerit. Sed si canis aper eum
persequendo [illegible] uulnerauit. Sed dicitur eo mouetur
quod [illegible] [illegible] [illegible]

sane en[im queri] potest nondum mihi damnum dederit
et [ita ignem habeat] ut motuam ne mihi de te ęquū sit
me inter actionem: K$\bar{P}$ DCC. IDEM IN FACTUM im
perare fortassis enim de hoc senserit ꝑculus. nisi quis
dixerit damni non facti sufficere cautionem. sed et si
quis serui inquilini insulam exuserit lib. x. urseius re
fert sauinum respondisse lege aquilia seruorum no
mine dominū nox ab iudicio conueniendum ex tolcato
autem dominū teneri negat proculus autem ℞
cum coloni serui uillam exuserit colonum uel ex locato
lege aquilia ita ut colonus seruus posset noxę dederit
et si uno iudicio res esset iudicata altero amplius non
agendō. K$\bar{P}$ DCCI. ITEM celsus libro XXVII digestorū
scribit. si cum apes meę ad tuas aduolassent totas
exuserit quosdam negare conpetere legis aquilię
actionem inter quos et ꝑculum quasi apes domini mei
non fuerint. sed id falsum esse celsus ait. cum apes eueni
re soleant et fructui missi sunt. sed ꝑculus eo mouetur
quod nec mansuete. nec ita clausę fuerint hd̄: ipse autē
celsus ait, nihil inter has et columbas interesse quae si
manu refugiunt domi tamen fugiunt3 EXPŁ TITULO
DE INCENDIARIIS. INCIP DE TERMINIA MOTA XIII. K$\bar{P}$
DCCII
MOYSES DICIT. Non transmouebis terminos pro
ximi tui quos constituerunt patres tui uel principes
possessionis tuę3 K$\bar{P}$ DCIII. PAULUS LIBER SEN
tentiarum sub titulo finium regundorum in eum
qui uim terminus deiecit uel amouit extra hordiné
anima aduertitur: K$\bar{P}$ DCCIIII. ULPIANUS LIB VIIII
de officio ꝑconsulis sub titulo de terminio moto eos qui
terminus mouerunt non inpune id facere debere

Line.

1. queri = quaeri; *before* nondum *supply* si. *For* dederit *read* dederis (*V.*, *W.*).
2. *For* habeat *read* habeas (*V.*, *W.*); *for* motuam, metuam (*V.*, *W.*); *for* de te, detur (*Huschke*: *M.* des); *and before* ęquū *insert* an.
3. inter, *read* interim (*Pithou*); *and for* Idem, id est.
3 *and* 4. imperare, *read* inpetrare (*V.*, *W.*, *B. index*).
6. quis, *read* qui; exuserit, *read* exusserint.
7. sauinum, *read* sabinum.
8. nox ab, *read* noxali (*V. cf.* noxiale *W.*); *and for* tolcato, locato.
9. ℞ = respondit.
10. exuserit = exusserint.
11. *Before* lege *supply* uel, *and before* ita *supply* teneri; seruus, *read* seruos; *for* dederit, dedere.

Line.

13. agendō, *read* agendū.
14. totas, *read* tu eas (*Digest*).
15. exuserit, *read* exusseris.
17 *and* 18. euenire, *read* reuenire.
18. missi, *read* mihi (*V.*, *W.*).
19. mansuete = mansuetae, cedilla *wanting*. hd= hic deest.
21. manu, *read* manum.
23. Deut. 19 : 14, *Biblical reference on margin by later hand.*
25. liber *read* libro.
25 *and* 26. *After* sententiarum *supply* primo.
27. *Before* uim *insert* per (*Paulus*); terminus, *read* terminos; hordine, *read* ordinem.
28. VIIII, *read* VIII (*octavo*).
29. terminio *for* termino.
30. terminus, *read* terminos.

Exod. 21 16
Deut. 24 7.

— 40 —

no

KP DCCV. DIUUS HADRIANUS TERENTIO GENTIA XVII KŁR. Septembriarum se III co[ns]ł Rescripsit Quo rescripto poenam uariam statuit uerba rescripta ita. sed habent pessimū factum eorum qui terminos finium causam positos abstulerunt dubitari non potest poenę eam modus ex conditione psonę et mente facientis magistratui poenam si splendidiores sunt psonae quę conuincuntur condubito quin occupandorum aliorum finium causa id admiserint, et possunt tempus ut cuius que cum patitur ętas relegari. et sic in biennium aut triennium ad opus publicum dari. quod si p ignorantiā aut fortuitu lapides uisus causa furati sunt sufficit eos uerberibus quoherceri: EXPŁ TITULUS DE TERMINEA mota KP̄ DCCVI: INCIP DE PLAGIARIIS XIIII MOYSES DICIT Quicumque plagiauerit quemquam israhel. et uindederit eum morte moriatur. KP̄ DCCVII:

PAULUS liber sententiarum V. sub titulo ad legem fabiam łege fabia tenetur qui ciuem idmanum ingenuus libertinum seruum uę alienum celauerit. uendiderit uinxerit comparauerit. et olim quidem huius legis poena summaria fuit. sed tranlata est cognitio in prefecto urbis; KP̄ DCCVIII; ITEMQUE PRESIDIS PROUINtię extraordinem meruit ani inaduersionem, ideo que humiliores ut in metallum damnentur aut in crucem tolluntur honestiorem adempta dimidiam partem bonorum Impp̄ relegantur, KP̄ DCCVIIII,

Si seruus sciente dn̄o alienum seruum subtraxerit, uendiderit celauerit an ipsum dnm animaduertitur, quod si id dn̄o ignorante commiserit in metallū datur. KP̄ DCCX, ULPIANUS LIBRO VIIII

Line. no
1. Gentia = Gentiano.
2. KŁR = Kalendarum. Septembriarum, *read* Septembrium.
3. rescripta, *read* rescripti.
4. sed, *read* se (*V.*, *W.*).
5. causam, *read* causa (*V.*).
6. eam, *read* tamen (*Dig.*).
7. magistratui poenam, *read* magis statui potest nam (*Digest*).
8. condubito, *read* non dubito (*V.*, *W.*).
9. tempus, *read* in tempus (*V.*, *W.*).
10. *Omit* cum *before* patitur, *and after* relegari, *supply* id est si iuuenior in longius, si senior recisius: si uero alii negotium gesserunt et ministerio functi sunt, castigari (*Dig.*).
12. fortuitu, *read* fortuito. uisus = usus (*Pithou*)
13. quoherceri, *read* coerceri; terminea mota *read* termino amoto.

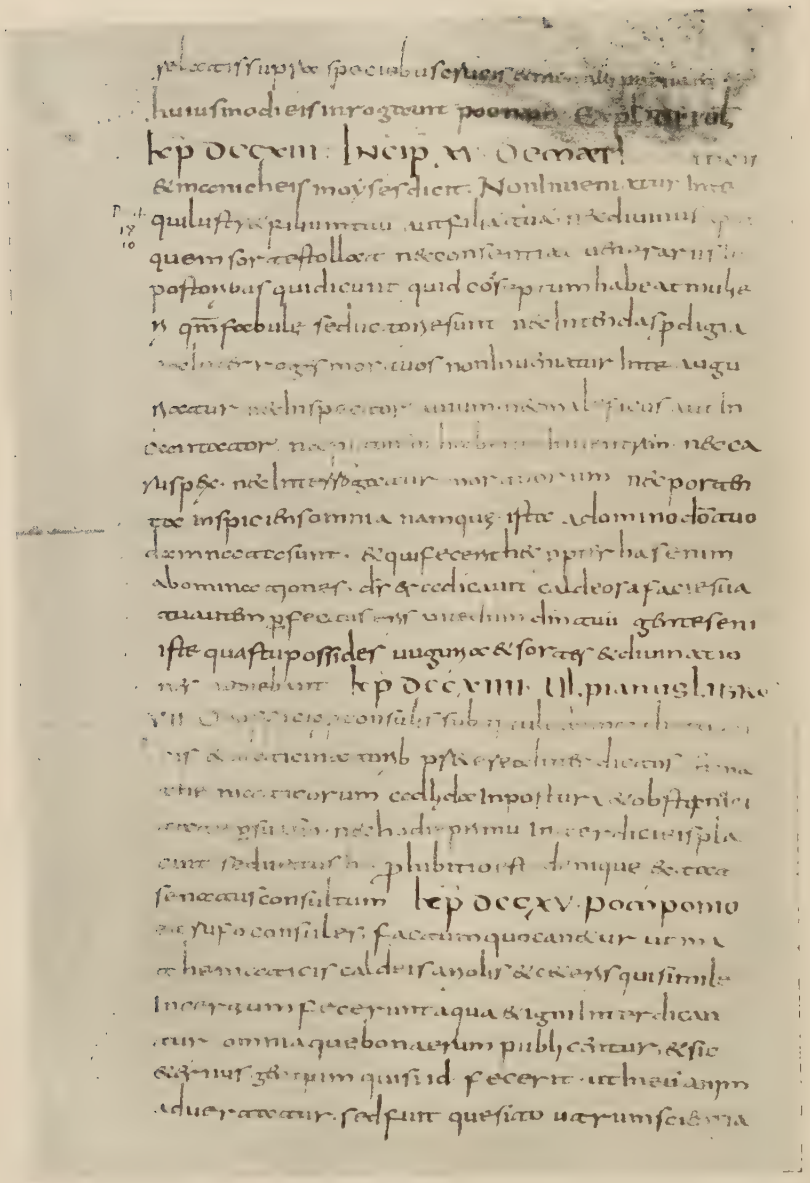
Line.
15 *and* 16. uindederit = uendiderit.
17. liber = libro.
18. idmanum, *read* Romanum (*W.*), *and for* ingenuus, ingenuum.
18 *and* 19. libertinum, *read* libertinumue.
21. summaria, *read* nummaria (*Cujas*). tranlata = translata; prefecto, *read* prefectum.
22. presidis, *read* praesidis.
23. ani inaduersionem, *for* animaduersionem.
24. ut, *read* aut (*V.*,*W.*); damnentur, *read* dantur (*V.*, *W.*).
25. honestiorem, *read* honestiores (*V.*, *W.*). dimidiam = dimidia.
25 *and* 26. partem = parte. Impp̄ = in perpetuum (*V.*, *W.*).
27. dn̄o = domino.
28. an, *read* in (*V.*, *W.*).

Lines 15 and 16. Exod, 21: 16; Deut. 24: 7, *on the margin by later hand*.

[illegible] consule ad legem Fabiam [illegible]
[illegible] cognitio [illegible] urbanis datur praetoribus
quam quamquidem emptam [illegible] cessat ut praetor sit
quamvis [illegible] sed hanc tamen quaestum est
constitutionibus ut vi rei quidem praetor urbis
solus superest cognoscat similiter annuus [illegible]
sit huius commissa humano tamen fiat interdictum pre
fecto urbi propositum est cognitio inquilinam hanc praefecti
peregrini. haec autem cessavit haec cognitio
in lungum tempus quamprimum praefectis peregrinis inquilinis fungen
tur plene postremissimam deficiente cessante
urbano succedunt huius certe cessantem peregrinum qui
illam primus regit hoc accepta tabulis causis cognoscere
non solet cognitionem ut de lege Fabiam possit cognoscere
Tit. DCC. VI. Imp. Antoninus. [illegible]
dem legem Iuliam de adulteriis [illegible] constitutione im
peratoris Antonini quaestione accepta lege autem hac
habetur quicumque romanum eundem quem quis in
habuit habuerit celaverit emerit quive ingenuum sciens dolo
malo emerit quive ingenuum sciens sciens dolo malo
quive eum cepit pretium dum legis poenam in lungitur. si servus
qui sciente domino fecerit dominus eius necetur quinquaginta
milibus eodem accepta punitur eiusdem legis capite
secundum haec fiunt. Tit. DCC. VII. Qui ad hoc servum
persuasit ut dominum fugiat quive alienum servum
in fatto domino celaverit. ubi dixi de furti emerit dolo malo
quive eum eaye sciens dolo quive sciens dolo malo
quinquaginta milia dare debet quae scribendum eadem est
genuerit constitutionibus capitalis sententia plagia
rius pecuniae [illegible] furti punitur quae iuris peritus

sub titu[lo] d[e o]fficio ꝑconsule ad legem fabiam frequens
est etiam legi[s f]abię cognitio in tribunalibus presidum
quamquam quidam ꝑcuratores cesari usurpauerint
quam romę tam in ꝑuintiis, sed enim iam eo ꝑuentum est
constitutionibus ut romę quidem prefectus urbis
solus superare cognoscat, si intra miliarium centesimū
sit inuia commissa enimuero si ultra centesimum pre
fectorum pretorio erit cognitio in ꝑuintiam enim presidū
ꝑuintiarum, nec aliter ꝑcuratori cesaris hęc cognitio
iniunguntur quam presidis partibus in ꝑuintia funga
tur plenę post sententiam de fabia latam ꝑcurato
ris parte succedunt huius certę adtamen ꝑcuratori qui
illam ꝑuintiā regit licet de capitalibus causis cognoscere
nec soleat tamen ut de lege fabiam possit cognoscere.
Kp dccxi Imp Antoninus constituit
Idem legis iulię de alteris cohercendis constitutione im
peratoris antonini questionē accipit lege autem fa
bia tenetur qui ciuem romanum eundemque qui in ita
lia liberatus sit celauerit uinxerit uinctumque habuerit
uindiderit emerit quiue in ęam rem socius fuerit cui
capite primo eiusdem legis poenam iniungitur. si seruus
qui sciente dn̄ō fecerit dn̄s̄ eius. sextertiis quinquaginta
militibus eodem capite punietur eiusdem legis capite
secundum tenetur, Kp̄ dccxii. Qui alieno seruo
ꝑsuaserit ut dominum fugiat qui uę alienum seruum
inuito domino celauerit, uendidedrit emerit dolo malo
quiue in ea re socius fuerit iubeturque populus extertiā
quinquaginta milia dare et reliqua / sciendum tamen est
ex nouellis constitutionib; capit$^{a}_{u}$lis sententia plagia
tores ꝑ atrocitate facti puniendos quāuis et paulus

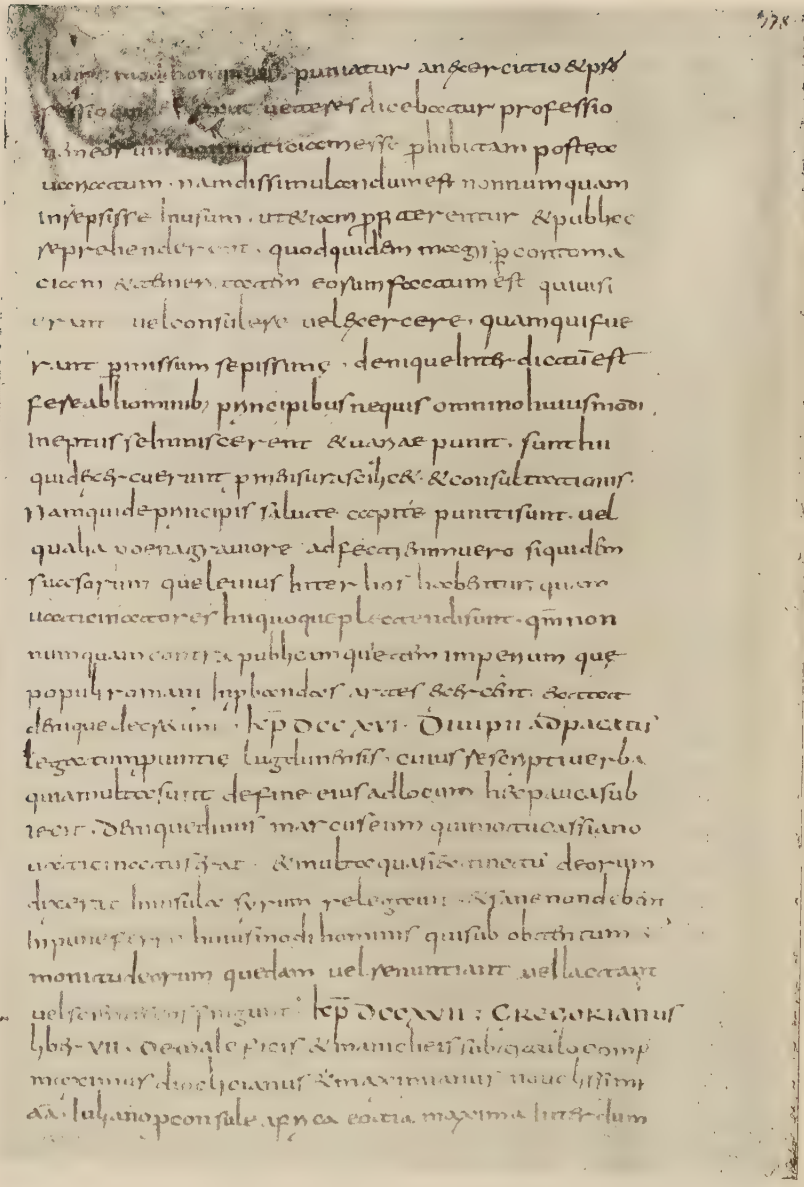
Line.
1. sub titulo de officio proconsule, *transpose* de officio proconsulis sub titulo.
3. cesari, *read* caesaris.
4. quam romę tam in prouintiis (ti = ci) *Huschke*, quum . . . tum. *M. retains text but transposes* tam in prouintiis quam Romae.
6. superare = super ea re (*V.*).
7. inuia, *read* iniuria (*Pithou*).
8. ꝑuintiam *read* provincia; enim, *read* est.
10. iniunguntur, *read* iniungitur; *after* quam *supply* si.
11. plenę = plane (*V.*, *W.*).
12. parte, *M. writes* partes; *for* huius certe adtamen, huiusce rei attamen; *for* ꝑcuratori, *read* procurator.
13. illam, *read* nullam (*M.*).
14. fabiam *read* fabia.
16. alteris, *read* adulteris (*V.*, *W.*).
17. accipit, *read* accepit (*V.*).
18. eundemque, *read* eumue (*Pithou*).
20. uindiderit = uendiderit.
21. poenam, *read* poena.
22. qui, *read* quis (Pauw); sextertiis *read* sestertiis.
23. militibus, *read* milibus, *and for* punietur, punitur.
24. secundum, *read* secundo.
26. uendidedrit, *omit the* d *before* r *as indicated in Codex by the dots round it.*
27. populus, *read* populo; extertia, *read* sestertia.
29. constitutionib = constitutionibus; capit$^{a}_{u}$lis, *read* capitali.



relatis supra speciebus crucis et m[etalli poenam]
huiusmodi eis inrogauit poen[am. Ex]pł TITUŁ,
KP DCCXIII: INCIP XV. DE MATHEMATICIS
et manicheis moyses dicit. Non inueniatur in te
qui lustret filium tuū aut filiā tuā nec diuinus aput
quem sortes tollat nec consentiat uenerariis in
postoribus qui dicunt quid co'septum habeat mulie
ri qm̄ fabulę seductorie sunt, nec intendas ꝑdigia
nec interroges mortuos non inueniatur in te augu
riatur nec inspector auium. nec maleficus aut in
cantator, nec pitonem habentē in uentrem. nec ca
ruspex nec interrogatur mortuorum, nec porten
ta inspiciens omnia namquę ista a domino dō tuo
damnata sunt. et qui fecerit hec ꝑpter has enim
abominationes. dś eradicauit caldeos a facie sua.
tu autem pfectus eris ante dnm̄ dm̄ tuū. gentes enī
iste quas tu possides uuguria et sortes et diuinatio
nes audiebant. KP DCCXIIII, ULPIANUS LIBRO
VII. de officio ꝑconsulis sub titulo de mathemati
cis et uaticinatorib; preterea interdictos est ma
thematicorum callida inpostura et obstanici
tate psuasio, nec hodie primū interdici eis pla
cuit sed uetus hec ꝑhibitio est. deniquę extat
senatusconsultum: KP DCCXV. POMPONIO
et rufo consules. factum quo canetur ut ma
thematicis caldeis ariolis et ceteris qui similē
incertum fecerunt aqua et igni interdican
tur omniaque bona erum publicentur, et sic
eternus gentium qui si id fecerit. ut in eū anim
aduertatur. sed fuit quesito utrum scientia

Line.
1. poenam *omit.*
2. eis, *read* reis (*V., cf. W.*); inrogauit, *read* inrogauerit (*V., W.*).
4. *Before* et *supply* maleficis.
5. Deut. 18: 10 *(Biblical reference) on margin by later hand.*
6. *For* tollat, *read* tollas; *for* consentiat, consentias; *for* uenerariis, uenenariis (*W., cf. V.*).
7. co'septum, *read* conceptum (*V., W.*).
7 *and* 8. mulieri, *read* mulier; seductorie, *read* seductoriae.
9 *and* 10. auguriatur = auguriator.
11. pitonem = pythonem; habentē, *read* habens.
11 *and* 12. caruspex = haruspex.
12. interrogatur = interrogator.
13. namquę = namque; dō = deo.

Line.
15. dś = deus; eradicauit, *M. (with Sept.) reads* eradicabit; caldeos = chaldeos (*V., W.*); sua, *better* tua (*cf. Sept.*).
17. iste, *read* ista; uuguria = auguria.
20. interdictos, *read* interdictum (*V., W.*).
21 *and* 22. obstanicitate, *read* obstinata (*M.*); *and for* psuasio, persuasione (*V., W.*).
25. consules, *read* consulibus; *and for* canetur. *read* cauetur.
26 *and* 27. similē incertum, *read* simile inceptum (*Huschke*).
27 *and* 28. interdicantur, *read* interdicatur (*V., W.*).
28. erum, *read* eorum; sic, *read* si.
29. eternus, *read* externarum (*cf. V. and W.*); qui si, *read* quis.
30. quesito, *read* quaesit um *or* questio.

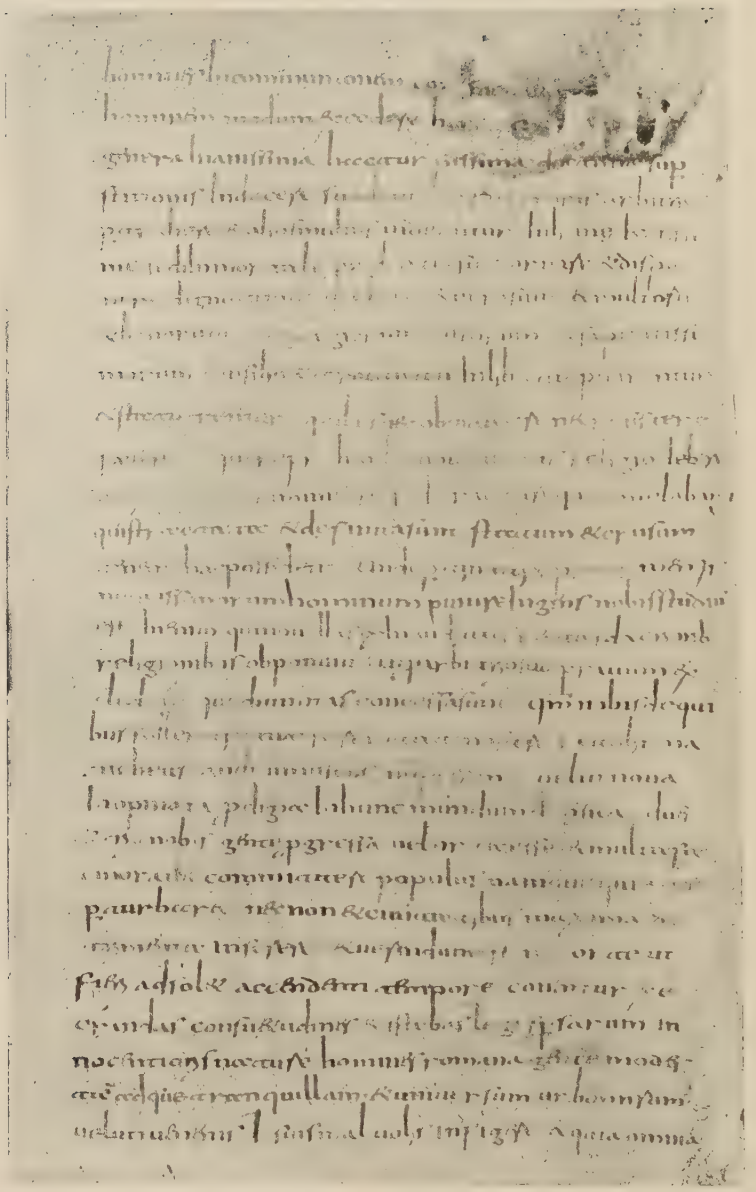


— 43 —

hui[us]modi hominum puniatur an exercitio et pro
fessio quidem aput ueteres dicebatur professio
nem eorum non noticiam esse ꝓhibitam postea
uariatum, nam dissimulandum est nonnumquam
inrepsisse in usum, ut etiam ꝓfiterentur, et publice
reprehenderent, quod quidem magis p contoma
ciam et temeritatem eorum factum est qui uisi
erant uel consulere uel exercere quam qui fue
rant pmissum sepissimę denique interdictū est
fere ab hominib3 principibus ne quis omnino huiusmodi
ineptiis se inmiscerent et uariae punit, sunt hii
quid exercuerunt ꝓ mensura scilicet. et consultationis,
nam qui de principis salute capite puniti sunt. uel
qualia poena grauiore adfecti enimuero si quidem
suasorumque leuius inter hos habentur, quam
uaticinatores hii quoque plectendi sunt. qm̄ non
numquam contra publicam quietem imperium quę
populi romani inꝓbandas artes exercent, extat
denique decretum. Kp̄ dccxvi. diui pii ad pacatū
legatum ꝓuintię lugdunensis, cuius rescripti uerba
quia multa sunt de fine eius ad locum hec pauca sub
iecit. denique diuus marcus eum qui motu cassiano
uaticinatus erat, et multa quasi extinctū deorum
dixerat in insula syrum relegauit. et sane non debent
inpune ferre huiusmodi hominis qui sub obtentum et
monitu deorum quedam uel renuntiant uel iactant
uel scientes eos fingunt, Kp dccxvii: Gregorianus
liber vii. de maleficis et manicheis sub titulo comp̄
maximus dioclicianus et maximianus nouelissimi
a a· iuliano ꝓconsule africae otia maxima interdum

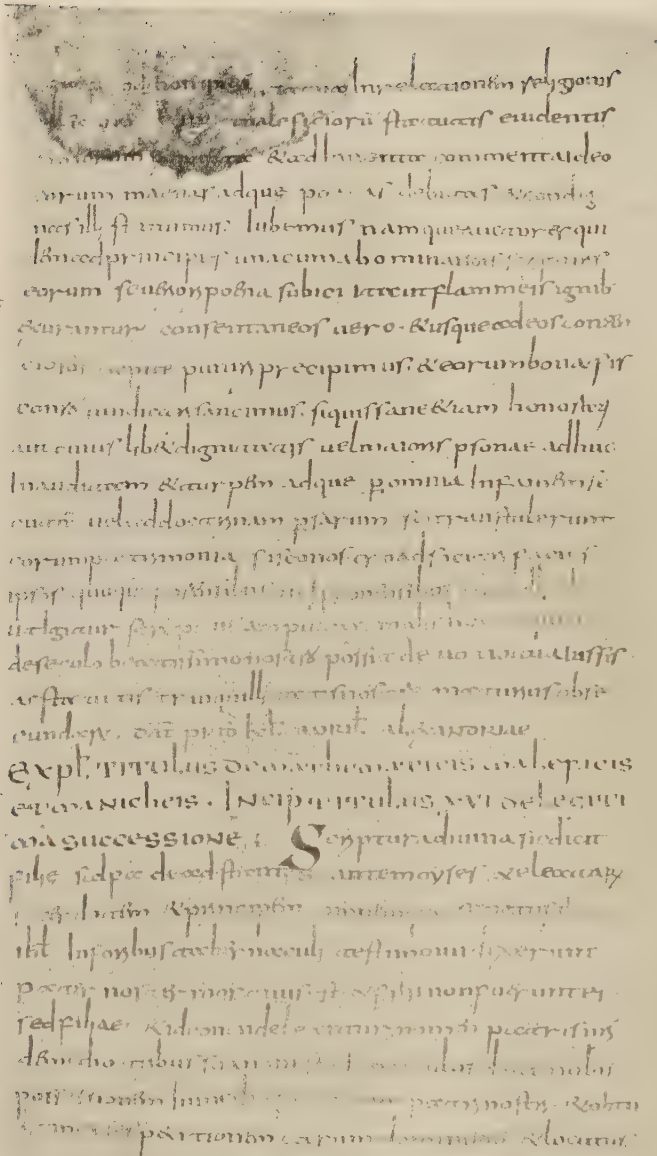
Line.
2. *Before* quidem *supply* et.
4. nam, *read* nec.
6. reprehenderent, *read* se praeberent.
6 *and* 7. contomaciam = contumaciam.
7. uisi, *Pithou reads* ausi.
8 *and* 9. qui fuerant, *read* quod fuerat.
9. sepissimę = saepissime.
10. hominib3, *read* omnibus.
11. inmiscerent, *read* inmisceret; *for* punit, puniti; *for* hii, ii.
12. *For* quid, *read* qui id; *for* exercuerunt, exercuerint; scilicet. et, *omit* et.
14. qualia, *read* qua alia (*V.*).
14 *and* 15. quidem suasorumque, *read* qui de sua suorumque (*Jac. Gothofred*).
5 *and* 16. quam uaticinatores, *M. writes* uaticinatores quamquam.

Line.
16. hii = hi.
21 *and* 22. subiecit, *read* subieci.
23. extinctū, *read* instinctu.
24. insula, *read* insulam.
25. hominis, *read* homines (*V.*, *W.*), *and for* obtentum et, obtentu ex.
26. renuntiant, *read* enuntiant (*V.*, *W.*).
27. eos fingunt, *Pithou omits* eos *and reads* confingunt.
28. de maleficis et manicheis sub titulo, *read* sub titulo de maleficis et manichaeis. comp, *read* impp (imperatores).
29. maximus dīoclicianus, *M. has* Diocletianus et Maximianus, a.a. [et Constantius], nouelisimi = nobilissimi.
30. 'ā ā'', *M. has* c. c. ꝓconsule, *read* proconsuli.



homines in communionem co[nditionis naturae]
hominem modum excedere hor[tantur] et [quaedam]
genera inanissima hac turpissima doctrinae sup
stitionis inducere suadent. ut sui erroris arbitrio
ptrahere et alios multos uideantur. Iulianę Karissi
mę sedi inmortale ꝓuidentia sua ornare et dispo
nere dignati sunt quę bona et uera sunt. et multorū
et bonorum et egregiorum uirorum et sapientissi
morum consilio et tractatu inlibata ꝓuarentur
et statuerentur. quibus nec obuiam ire nec resistere
fas est. neque reprehendi a noua uetus religio debere
maximi enī criminis est. sed tractare que semel ab anti
quis tractata et definita sunt statum et crusum
tenent hac possident. unde ptinatiā prauę mentis
nequissimorum hominum punire ingens nobis studiū
est. hi enim qui nouellas ex inauditas rectas deteriorib3
religionibus obponunt. ut ꝓ arbitrio suo prauum ex
cludant que diuinitas concessa sunt. q̄m nobis de qui
bus sollertia tua serenitati nostre retulit ma
nicheus audiuimus eos nuperrimę uelut noua
inopinata ꝓdigia in hunc mundum de psica aduer
saria nobis gente ꝓgressa uel orta esse. et multa fa
cinora ibi committere populus namque quietos
pturbaret. nec non et ciuitatibus maxima de
trimenta inserere et uerendum est ne forte ut
fieri adsolet accendenti tempore conentur exe
crandas consuetudines et istebas leges psarum in
nocentioris nature homines romana gente modes
tā adque tranquillam. et uniuersum urbem n̄rum
ueluti uenenis de suis maliuolis infigere, et quia omnia

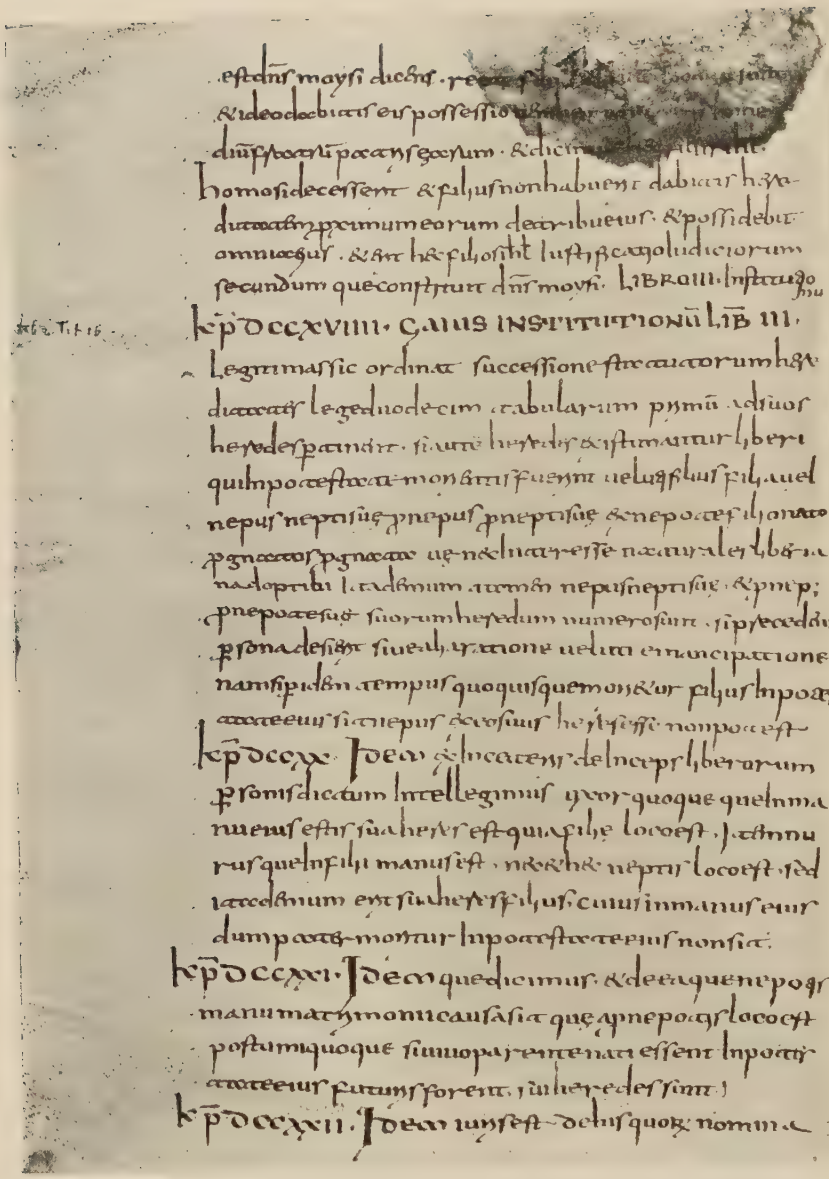
Line.
1. communionem, *M. has* communione.
2. hominem, *read* humanae (*V., W.*).
5 *and* 6. Iulianę Karissimę, *read without cedillas.*
6. sedi inmortale, *read* sed dii inmortales; ornare, *read* ordinare (*V.*).
7. et multorū, *read* ut multorum (*Cujas*).
9. ꝓuarentur = probarentur.
11. debere, *M. has* deberet.
12. sed tractare, *read* retractare; que=quae.
13. tractata; *read* statutā *with V.*; *for* sunt, suum (*Pithou*); *for* crusum, cursum.
14. hac, *read* ac.
16. ex, *read* et; *for* rectas, sectas (*W.*); *for* deteriorib3, ueterioribus.
17. prauum, *read* prauo.
18. que = quae; diuinitas, *read* diuinitus; *for* q̄m = quoniam, *read* quondam.
19. nostre = nostrae (*Cujas*).
20. nuperrimę = nuperrime; uelut = ueluti.
21. *Before* inopinata *supply* et.
23. populus, *read* populos.
24. pturbaret, *read* pertubare.
26. accendenti, *read* accedenti; *after* conentur *supply* per (*Pithou*).
27. istebas, *read* scaeuas (*Pithou*).
28. nature=naturae; romana gente, *read* Romanam gentem(*V.W.*).
29. adque = atque; urbem, *read* orbem.
30. infigere, *read* inficere (*Cujas*).



qu[ae pandit prudent]ia tua in relationem religionis
ill[orum genera] maleficiorū statutis euidentis
simorum ex[q]uisita et ad inuenta commenta ideo
eorum maenas adquę poenas debitas et condig
nas illi statuimus. iubemus namque auctores qui
dem ad principes una cum abominandis scripturis
eorum seueriori poena subici ita ut flammeis ignib3
exurantur consentaneos uero, et usque ad eos conten
ciosos capite puniri precipimus, et eorum bona fis
co n̄ro uindicari sancimus, si quis sane etiam honorati
aut cuiuslibet dignitatis uel maioris psonae adhuc
inauditam et turpem adque p omnia infamem se
cutā uel ad doctrinam psarum se transtulerunt
eorum patrimonia fisco nostro adsociari facies
ipsos quoque forensibus uel pconensibus metallis dari
ut igitur strepitus amputari malis hęc nequitię
de seculo beatissimo nostro possit deuotio tua iussis
ac statutis tranquillitatis nostre maturius obse
cundare. dāt prīd pl. april. alexandriae:

Expł titulus de mathematicis maleficis
et manicheis. Incip titulus xvi de legiti
ma successione; Scriptura diuina sic dicit
filię salfade adstantes ante moyses et eleataR
sacerdotem et principem omnemque senatu filioR
ihł. in foribus tabernaculi testimonii dixerunt,
pater noster mortuus est. et filii non fuerunt ei
sed filiae et ideo non deleantur nomen patris n̄ri
de medio tribus sua non est ei masculus date nobis
possessionem in medio fratrum patri nostri, et obtu
lit moyses petitionem earum domino dō et locutus

Line.
1. relationem, *read* relatione.
2 *and* 3. euidentissimorum, *M. has* euidentissime sunt. ad iunenta, *read* inuenta (*V.*, *W.*).
4. eorum maenas, *read* aerumnas (*V.*, *W.*). adque = atque.
5. illi, *read* illis (*Schulting*).
6. ad = ac (*V.*, *W.*).
8. consentaneos, *Huschke reads* consectaneos; ad eos, *read* adeo (*Pithou*).
10. quis, *read* qui.
11. maioris, *M.* maiores. *Before* adhuc *M. supplies* ad.
12. adque = atque.
12 *and* 13. secutā *read* sectam (*cf. V.* secta).
13. psarum = persarum. transtulerunt, *read* transtulerint.
15. forensibus, *read* Phaenensibus (*Pithou*). pconensibus = proconnensibus.
16. strepitus, *read* stirpitus (*V.*, *W.*). malis, lues, *M.*
18. nostre = nostrae. maturius, *read* maturet (*Huschke*).
23. salfade, *M. reads* salfad. moyses, *read* moysen, eleataR, *read* Eleazarum (*W.*).
24. principem, *read* principes (*V.*, *W.*) senatu, *read* senatum (*V. W.*).
25. ihł = Israhel.
27. deleantur, *read* deleatur (*V.*, *W.*).
28. sua, *read* suae.
30. domino dō, *read* coram deo (*W.*).



— 46 —

est dns moysi dicens. recte fili[ae salpade locutae sunt]
et ideo dabitis eis possessionem [hereditatis in me]
diū fratrū patris ęarum. et dicimu[s hec] filiis ihł
homo si decesserit et filius non habuerit dabitis here
ditatem ꝑximum eorum de tribu eius, et possidebit
omnia eius. et erit hec filios ihł iustificatio iudiciorum
secundum que constituit dns moysi. Libro III. institutio
KP DCCXVIIII. GAIUS INSTITUTIONŪ LIB III. nū
Legitimas sic ordinat successione statutorum here
ditates lege duodecim tabularum primū ad suos
heredes ꝑtinent. si autē heredes existimantur liberi
qui in potestate morientis fuerint ueluti filius filia uel
nepus neptisuę ꝑnepus ꝑneptisuę ex nepote filio nato
ꝑgnatos ꝑgnata uę nec interesse naturales liberi a
n adoptibi ita demum tamen nepus neptis uę et ꝑnep3
ꝑnepotesuę suorum heredum numero sunt. si precedens
psona desierit siue alia ratione ueluti emancipatione
nam si p idem tempus quo quisque morietur filius in potes
tate eius sit nepus ex eo suus heres esse non potest
KP DCCXX. IDEM ex in ceteris deinceps liberorum
psonis dictum intellegimus uxor quoque que in ma
nu eius estis sua heres est quia filię loco est, item nu
rus que in filii manus est, nec et hec neptis loco est, sed
ita demum erit sua heres filius, cuius in manus eius
dum pater moritur in potestate eius non sit;
KP DCCXXI. IDEMque dicimus, et de eaque nepotis
manu matrimonii causa sit quę a ꝑnepotis loco est
postumi quoque si uiuo parente nati essent in potes
tate eius futuris forent, sui heredes sunt.
KP DCCXXII. IDEM iuris est de his quoR nomina

Line.
1. salpade, *read* salfad.
2 *and* 3. mediū, *read* medio (*V.*, *W.*).
3. dicimus, *read* dices (*cf.*, dicis, *V.*).
4. filius, *read* filium; *before* dabitis *a large portion of the text has fallen out.*
5. ꝑximum = proximo.
6. filios, *read* filiis. ihł = Israhel.
7. que = quae; Libro III institutionu, *omit as interpolation.*
8. Lib. 2, Tit. 16, (*reference to Gaius*) *on margin by later hand.*
9. successione statutorum, *read* successiones intestatorum.
11. si, *read* sui.
12. fuerint, *read* fuerunt; *for* filia uel, filiaue.
13. nepus = nepos; *after* neptisuę *add* ex filio; ꝑnepus, *read* pronepos.
14. ꝑgnatos, *read* prognatus; *for* interesse, interest (*Just.*); *after* naturales *supply* sint (*Just.*).
15. adoptibi, *read* adoptiui; ꝑnep3 = pronepos.
16. ꝑnepotesuę, *read* proneptisue.
17. *After* desierit *supply* in potestate parentis esse siue morte id acciderit (*Just.*).
20. ex, *read* et.
21. que = quae.
21 *and* 22. *After* manu *supply* est; *for* eius estis *read* ei cuius in manu est (*M.*).
23. que = quae; manus, *read* manu; *for* nec, nam (*V.*).
24. *After* heres, *supply* si; manus eius, *read* manu.
25. dum, *read* cum.
26. ea que, *read* ea quae; *after* ea que *supply* in.
27. quę a, *read* quia.
28. *After* quoque *supply* qui.
29. futuris, *read* futuri.
30. quoR = quorum; nomina, *read* nomine (*Pithou*).

[illegible] gesencecium consultam post-
[illegible] inpocestacae eius pu-
cum essent. & dero filio quae prima secunda quae man
cipacionem post mortem pocest manum mittatur
Inuelle gimus cum filius filiae & cetero filione
pocest ue gerat. pocest cer adhe; reditacem uocan
cur. nec quis gradum ppium est ubeyose geludit &
quam minui debeat. ne pocest ne pacer uel inpecty suilo co
por acionem que succedere pecty macionem. & sine
pus ne pater sue tia ge filio. ceteg p nepus p nepotis ue simul
uocentur. & quic placebat nepocest nepocis ue.
kp̄ dccxviii. Item p nepocest p nepotis ue inpocty
suilocum succedere conuenit nec in accipiacr sed in
stirpem hae diacr. diuidia utfilius cum duabus
em hereditacis fruct ge cetero filio duoplus
us nepocis cetera im dimidium. kp̄ dccxviii
Item si ex duobus filiis nepocis ge abia ge altero
filio unus forte uel cetero ire sui ty uacuuo
ed aera dimidium decognocty sui ulli ex eorum
hereditem tunc hereditas pgnit. & ecedem legi duo
decim accubulcrum ed cognocti uocantur. autem
agnati quilegitima cognacione uincty sunt legitima
autem cognacio hoc est que pmyty ge cumpsone conlun
gitur. eaque eodem patre nati sunt. fracres agnati
ulli sum. quidam consanguinei uocantur. nec sequin
cur. inuitis ecedem habuerim. kp̄ dccxxv.
Item pocty uus fracty filio & nuicem mitty agnatus
est eodem modo si sunt fracres pocty uel ex matre
i deest quae duobus fracty bus pgnis acty sunt quos pty q;
& sic eos consopinos uocant quacratione seiber & iam

[ex lege aelia sentia] uel ex senatum consultum post
mortem [patris causa] ꝓbata in potestate eius fu
turi essent, et de eo filio qui ex prima secundaqꝫ ꝫman
cipationem post mortem patris manum mittitur
intellegimus cum filiis filiaqꝫ et ex altero filio ne
potesqꝫ existent pariter ad hereditatem uocan
tur. nec qui gradum ꝓpium est ulteriore excludit et
quam enim uidetur nepotes neptesue in patri sui loco
portionemque succedere patri rationem, et si ne
pus neptisue sit ex filio, sed ex ꝓnepus ꝓneptisqꝫ simul
uocantur, et quia placebat nepotes nepotes uꝫ,
Kp dccxxiii. Item ꝓnepotes ꝓneptesue in patri
sui locum succedere conueniens non in capita sed in
stirpem hereditatis diuidit ut filius dimidiam par
tem hereditatis fruat ex altero filio duo plures
uꝫ nepotes alteram dimidiam: Kp dccxxiiii,
Item si ex duobus filiis nepotes extent ex altero
filio unus forte uel ex altero ires aut quattuor
altera dimidiam de agnatis si nullus sit suorum
heredum tunc hereditas ꝓtinet, et eadem lege duo
decim tabularum ad agnatos uocantur autem
agnati qui legitima cognatione uincti sunt legitima
autem cognatio hoc est que ꝑ uirili sexu ꝑsona coniun
gitur, itaque eodem pater nati sunt. fratres agnati
uisi sunt qui etiam consanguinei uocantur nec requiri
tur an matre eadem habuerint. Kp dccxxv,
Item patruus fratris filio et inuice his illi agnatus
est eodem numero sunt fratres patrueles inter se,
id est qui ex duobus fratribus ꝓgenerati sunt quos pleriq;
etiam consoprinos uocant qua ratione scilicet etiam

Line.
1. senatum consultum, *read* senatus consulto (*V.*).
2. *After* causa *supply* probatur; nam et hi uiuo patre causa (*Gaius*).
3. *After* essent *supply* quod (*Gaius*); *for* secundaqꝫ, *read* secundaue.
3 *and* 4. ꝫmancipationem, *read* mancipatione.
5. intellegimus, *read* intellegemus *and add* igitur.
5 *and* 6. nepotes uꝫ, *read* nepotes neptesue (*Gaius*).
6. existent, *read* extant (*M.*).
7. gradum, *Pithou* gradu. ꝓpium, *read* propior (*Pithou*). ulteriore, *read* ulteriorem.
7 *and* 8. et quam, *read* aequum.
8. patri sui loco, *read* patris sui locum.
9. patri rationem, *read* pari ratione (*V.*, *W.*)
10. sed, *read* et (*V.*, *W.*); *before* ꝓnepus *insert* nepote, *and read* pronepos.
11. nepotes uꝫ *read* neptes ue (*V.*).
12. patri, *read* patris.
13. conueniens, *read* conueniens esse uisum est.
14. stirpem, *read* stirpes; *for* hereditatis, *read* hereditates; *for* diuidit, *read* diuidi ita (*M.*).
15. fruat, *read* ferat *and add* et.
18. *After* uel *add* duo; ires, *read* tres; *after* quattuor *supply* ad unum aut ad duos dimidia pars pertineat et ad tres aut quattuor.
19. dimidiam, *read* dimidia.
20. et = ex (*V.*).
22. uincti, *M.* has iuncti.
23. hoc, *M. omits, but better read* haec (*Huschke*); que = quae; uirili sexu, *M. has* uirilis sexus; psona, *read* personas.
24. *After* itaque, *M. supplies* qui; pater, *read* patre.
25. uisi, *M. has* sibi.
26. matre eadem, *read* matrem eandem.
27. inuice, *read* inuicem; his = is.

ad plures gradus agnitionis puenire potuerimus [n]on
tamen omnib3 simul agnatis dat lex duo[deci]tabu
larum hereditatem, sed his qui tunc certum est aliquē
intestato decessisset ꝑximo gradu sunt, nec in eo iure
successio est. ideoque si heredes ꝑximos omiserint uel ante
quam hereditatem adierit decesserit sequentib3 nihil
iuris ex lege competit, ideo aū n̄ mortis tempore certū
fuerit aliquem in testamentum decessisse quam si quis tes
tam̄to facto decesserit melius esse uisus est tunc requiri
ꝑximū cū certū ēē coeperit neminem ex testam̄to heredes
forte qui ad feminas adtinet hoc iure aliud in ipsarū here
ditatib3 capiendis placet aliud in ceterorum ab his capi
endis, nam et feminarum hereditates ꝑinde agnationis iu
re redeunt adq3 masculorum nrē uero hereditates ad femi
nas ultra consanguinei eorum gradum non ꝑtinent, itaq3
soror fratri sorori uę legitima heres est. amita uero et
fratris filia heres esse non potest sorores ãu nob. loco est
etiam mater aut nouerca que ꝑ in manum conuentionē
aput patrem nrum̄ ius filię cuncta est, si quis defunctus erit
si sit frater et alterius fratris filius sicut ex uperioribus
intellegitur frater pocior est quia gradu precedit. sed alia
faciat iuris interpretatio inter uos heredes. quod si defunc
ti nullus frater exstet, sed sint liberi fratrum ad omnes
quidem hereditas ꝑtinet, sed quesitum est si dispari nume
ro sint forte nati ex uno unus uel duo, et ex altero tres
aut quattuor utrum in stirpes diuidenda sit hereditas,
sicut inter uos heredes iuris est pocius in capita iam du
dum ãu placuit in capita diuidendā hereditatē itaq:
quodquod dederunt ab utraque parte ꝑsonę in tot por
tiones fuerunt si nullus agnatus sit eadem lex duodecim

Line.
1. agnitionis, *read* agnationis. potuerimus, *read* poterimus (*W.*).
3. tunc, *M. has* tum cum.
4. intestato, *read* intestatum. decessisset, *read* decessisse.
5. heredes, *read* hereditatem; ꝑximos, *read* proximus; omiserint, *read* omiserit.
6. sequentib3 = sequentibus.
7. aū = autem non. *After* tempore *supply* quis proximus fuerit requirimus sed eo tempore quo (*V., W. and Gai.*).
8. in testamentum, *read* intestatum. quam, *read* quia (*Gai.*).
8 *and* 9. testam̄to = testamento.
9. uisus, *read* uisum.
10. ēē = esse; *supply* eo *before* testamto (*Gai.*). heredes, *read* heredem.
11. forte, *read* fore; qui, *read* quod; *before* adtinet, *supply* tamen (*V., W.*).
13. nam et, *Gaius omits* et.

Line.
14. adque = atque. nrē = nostrae.
15. consanguinei eorum, *read* consanguineorum (*W.*).
17. sorores, *read* sororis (*V., W.*). aū nob. = autem nobis.
18. que, *read* quae.
19. cuncta, *M. has* nancta, *Huschke* consecuta. *After* si *supply* ei. quis *for* qui.
20. si sit, *M. omits* si. *For* uperioribus *read* superioribus.
22. faciat, *read* facta est. uos, *read* suos.
27. uos, *read* suos (*V., W.*); *before* pocius = potius, *insert* an (*V., W.*).
28. aū = autem.
29. quodquod dederunt *read* quotquot erunt (*V., W.*).
29 *and* 30. *After* portiones *supply* hereditas diuidetur et singuli singulas portiones.
30. fuerunt, *read* ferunt.

[illegible] cum [illegible] adhered[illegible] [illegible] uocu quisq[illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
cum illo cedinonen[illegible] [illegible] [illegible] [illegible] [illegible]
abisse[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

¶ P dcc xxvi ¶ Paulus lib[illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
de testam[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
qui aditum [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[

tabularum gentiles ad hereditatem uocat qui sunt
autem gentiles primo comentariorum et ultimum est
cum illic admouerimus gentilicium ius in desuetudinē
abisse supuacuum est hoc quoque loco de ea re curiosius tractare
Kp dccxxvi. Paulus liber sententiarum vii. sub titulo,
de testamentorum successionib3 intestati dicuntur
qui testamentum facere non possunt, uel ipsi linum ut
intestati decederent abruperunt uel hii quorum
hereditas repudiata est. cuius nec condicio defecerit
sine iure pretorio factū testamentū abiecta doli expec
tatione optinebit eorum quorū testam̄ta rumpun
tur aut inuita fiunt ipso quidem iure testam̄ti dece
dunt intestatorum hereditas lege duodecim tabula R̄
primum suis hereditatib3 deinde agnatis et aliquando
quoque gentib3 deferebatur sane consanguineis lex ñ
adprehenderat interpretationē prudentium primū
inter agnatos loco acceperunt sui heredes sunt hoc
primo loco filius filia in potestate patris constituti
nec interest si adoptiui sint an naturales. et secundū
legem Iulia pipiamuę quesiti modo maneant in potes
tate qui sui heredes sunt ipso iure heredes etiā ignoran
tes constituuntur ut furiosi aut infantes et peregri
nantes quibus bonorum possessionis ꝑpter pretoriā
actionem non erat necessariā sui heredibus adeo ad mor
tem testatoris rerum hereditariorū dominiū continua
tur. ut nec tutoris auctoritas pupillo nec foriosis cura
tur sit necessarius nisi forte soluenda sit hereditas
quamuis etiam furiosus si resipierit et pupillus si adoleuerit.
abstinere possint post mortem patri natus, uel ab hostib3
reuersus aut ex primo secundoue mancipio manumissus

Line.
1. sunt B^a, *read* sint B^b.
2. comentariorum et ultimum est, *read* commentario retulimus et (*Gai.*).
3. admouerimus, *read* admonuerimus (*W.*).
5. liber, *read* libro; *for* vii, *read* iiii.
6. testamentorum, *read* intestatorum.
7. *After* possunt, *M. inserts* uel iure non fecerunt cum possent.
9. cuius nec, *M. has* quibusue.
10. sine, *Huschke reads* nisi, *Cujas* sane; *after* pretorio *add* non iure (*M.*); abiecta, *read* obiecta.

10 *and* 11. expectatione, *read* exceptione.

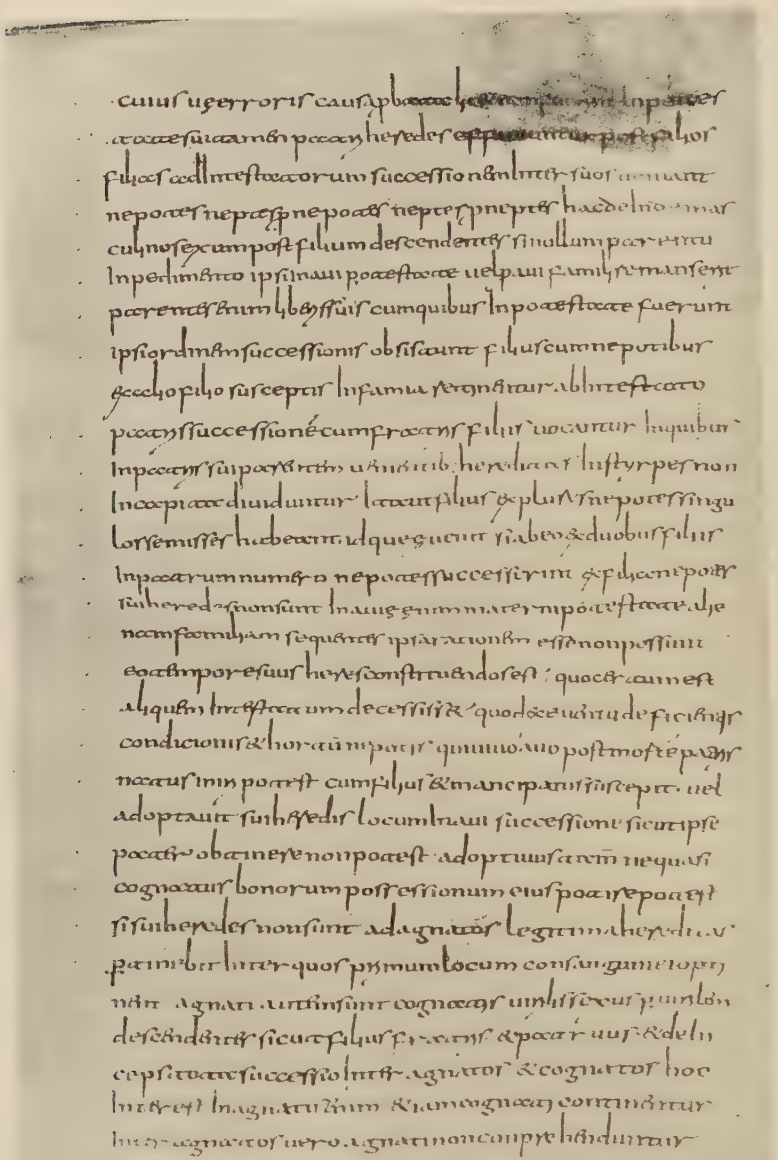
11. eorum, *M. has* horum.
12. inuita, *read* inrita; *for* testamti, testati.

12 *and* 13. *After* decedunt *read* sed per consequentias sublato testamento intestati decedunt (*V.*, *W.*).

14. hereditatib3 = hereditatibus, *read* heredibus.
15. gentib3, *read* gentilibus; *for* consanguineis, consanguinei quos (*Cujas*); ñ = non.
16. interpretationē, *read* interpretatione.
17. loco, *read* locum. hoc, *M. omits*, *Huschke reads* hi.
20. pipiam, *read* papiam.
23. possessionis, *read* possessio nisi (*Vangerow*).
24. necessariā, *read* necessaria; *for* sui. suis; ad mortem, *read* a morte.
25. hereditariorū, *read* hereditariarum.
26. pupillo, *read* pupillis (*V.*, *W.*); *for* foriosis, furiosis.

26 *and* 27. curatur = curator.

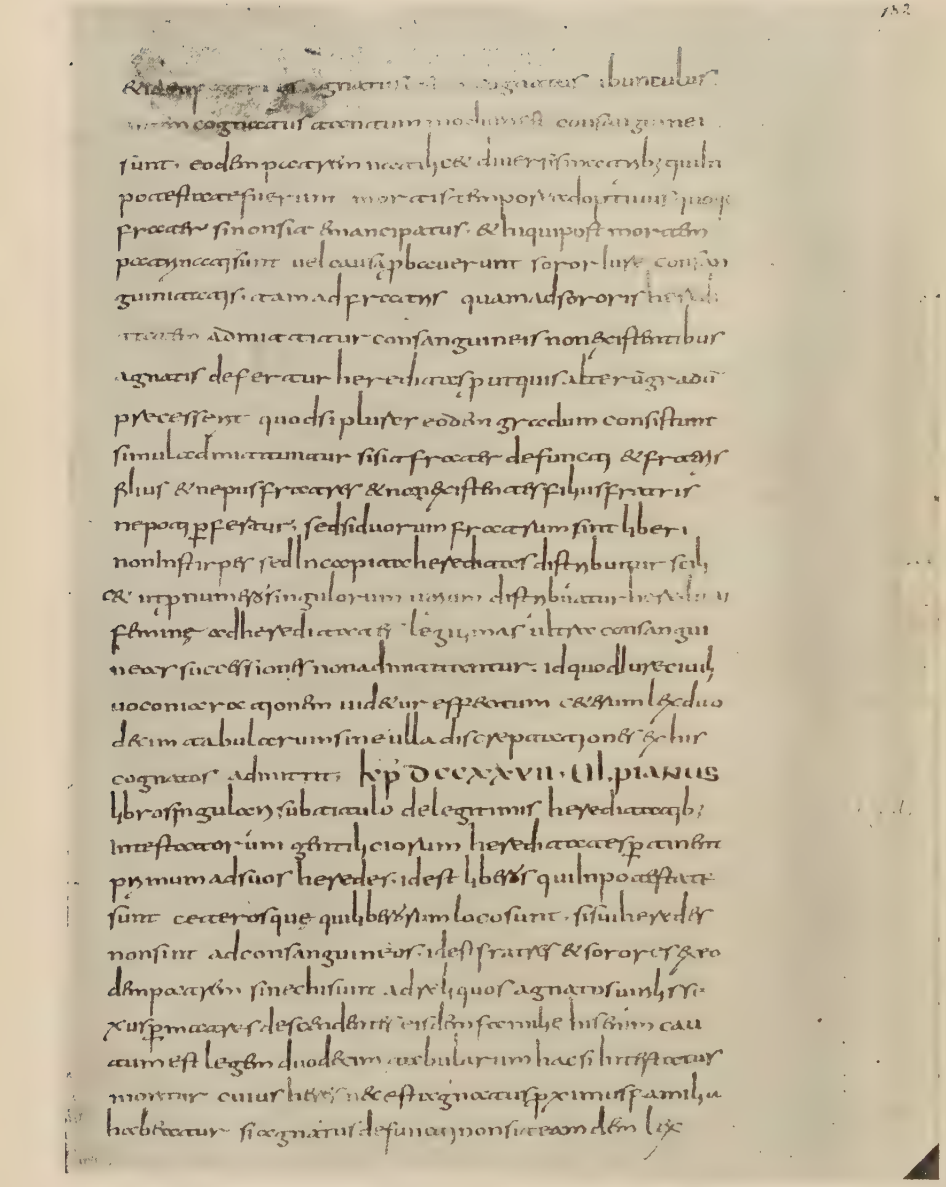
27. *After* forte *Krueger supplies* ut abstineant si minus forte; *for* soluenda *read* soluendo.
28. resipierit, *read* resipuerit (*W.*).
29. patri, *read* patris.



cuiusuę erroris causa ꝑbata licet non fuerint in potes
tate sui tamen patri heredes efficiuntur post filios
filias ad intestatorum successionem inter suos ueniant
nepotes neptes ꝑnepotes neptes ꝑneptes hac deinde mas
culino sexum post filium descendentes si nullum parentū
inpedimento ipsi in aui potestate uel ꝑaui famili remanserit
parentes enim liberis suis cum quibus in potestate fuerunt
ipsi ordinem successionis obsistunt filius cum nepotibus
ex alio filio susceptis infamia retinentur ab intestato
patris successionē cum fratris filiis uocantur in quibus
in patris sui parentem uenientib3 hereditas in styrpes non
in capita diuiduntur ita ut filius ex plures nepotes singu
los semisses habeant, idque ꝯuenit si abeo ex duobus filiis
inpatrum numero nepotes successerint ex filia nepotes
sui heredes non sunt in auię ꝯnim materni potestate alie
nam familiam sequentes ipsa rationem esse non possunt
eo tempore suus heres constituendos est, quo certum est
aliquem intestatum decessisset quod ex euentu deficientis
condicionis et hortū nepotis qui uiuo auo post mortē patris
natus iniri potest cum filius et mancipatus suscepit, uel
adoptauit sui heredis locum in aui successione sicut ipse
pater obtinere non potest adoptiuus tam̄ ne quasi
cognatus bonorum possessionum eius potire potest
si sui heredes non sunt ad agnatos legitima hereditas
ptinebit inter quos primum locum consanguinei opti
nent agnati autem sunt cognatis uirilis sexus p uirilem
descendentes sicut filius fratris et patruus, et dein
ceps tota successio inter agnatos et cognatos hoc
interest in agnatis enim etiam cognati continentur
inter agnatos uero agnati non conprehenduntur

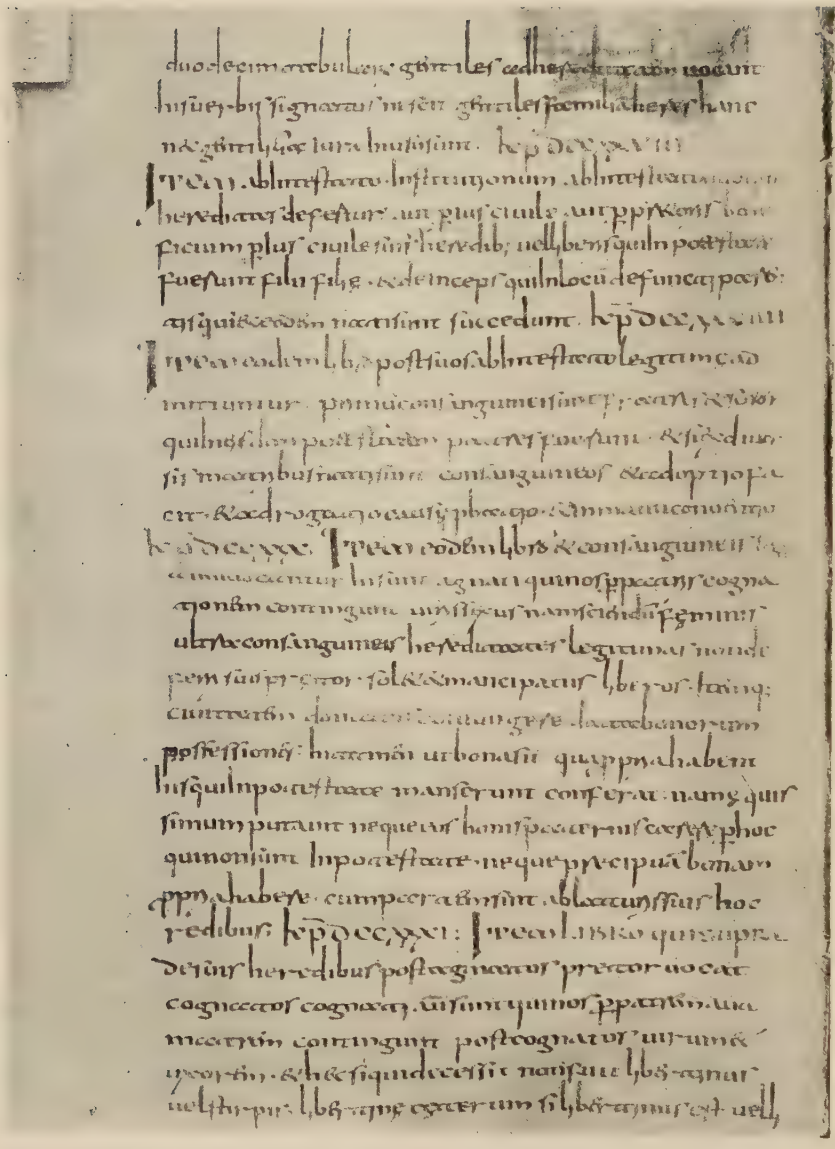
Line.

1. *After* ꝑbata *supply* est.
3. ueniant, *read* ueniunt.
5. sexum, *read* sexu; post, *read* per (*Rittershusius*); nullum, *read* nullo.
6. famili, *read* familia; remanserit, *read* remanserint.
8. ordinem, *read* ordine; filius, *read* filii si.
9. infamia, *read* in familia; ab intestato, *read* ad intestati (*V.*, *W.*).
10. in, *omit* (*M.*).
11. parentum, *read* partem; styrpes, *read* stirpes.
12. diuiduntur, *read* diuiditur; filius ex, *read* unus filius et (*V.*, *W.*).
13. idque, *read* idemque (*Pithou*); abeo, *read* auo.
14. inpatrum, *read* inpari.
15. auię, *read* aui.
16. rationem, *read* ratione.
17. constituendos, *read* constituendus.
18. decessisset, *read* decessisse.
19. hortū, *M.* ortu. *After* patris, *M. has* conceptus sit et post mortem aui.
20. iniri, *M. has* finiri; cum, *read* quem; et mancipatus, *read* emancipatus.
22. *After* potest *M. adds a second* potest; ne, *read* nec (*Blume*).
23. possessionum, *M. has* possessionem; potire, *read* petere.
26. cognatis, *read* cognati. *After* uirilem *supply* sexum.
29. *After* interest *add* quod (*Paulus*); enim *omit*.
30. agnatos *obvious error for* cognatos (*W.*).



et ideo patr[uu]s agnatus est et cognatus abunculus
autem cognatus tantum modum est consanguinei
sunt, eodem patrem nati licet diuersis matrib3 qui in
potestate fuerunt mortis tempore adoptiuus quoq3
frater si non sit emancipatus, et hi qui post mortem
patri nati sunt uel causa ꝑbauerunt soror iure consan
guinitatis, tam ad fratris quam ad sororis heredi
tatem admittitur consanguineis non existentibus
agnatis defertur hereditas ꝑut quis alterū gradū
precesserit quodsi plures eodem gradum consistunt
simul admittuntur si sit frater defuncti et fratris
filius et nepus fratres et non existentes filius fratris
nepoti ꝑfertur, sed si duorum fratrum sint liberi
non in stirpes sed in capita hereditas distribuitur scili
cet ut ꝑ numero singulorum uirium distribuatur hereditas
feminę ad hereditates legitimas ultra consangui
neas successiones non admittantur. id quod iure ciuili
uoconia rationem uidetur effectum ceterum lex duo
decim tabularum sine ulla discreptationes ex his
cognatos admittit, Kp dccxxvii. Ulpianus
libro singulari sub titulo de legitimis hereditatib3
intestatorum gentiliciorum hereditates ꝑtinent
primum ad suos heredes, id est liberos qui in potestate
sunt ceterosquę qui liberorum loco sunt, si sui heredes
non sint ad consanguineos, id est fratres et sorores ex eo
dem patrem si nec hi sunt ad reliquos agnatos uirilis se
xus ꝑ matres descendentes eisdem familię his enim cau
tum est legem duodecim tabularum hac si intestatus
moritur cuius heres nec est agnatus ꝓximus familia
habeatur. si agnatus defuncti non sit eamdem lex

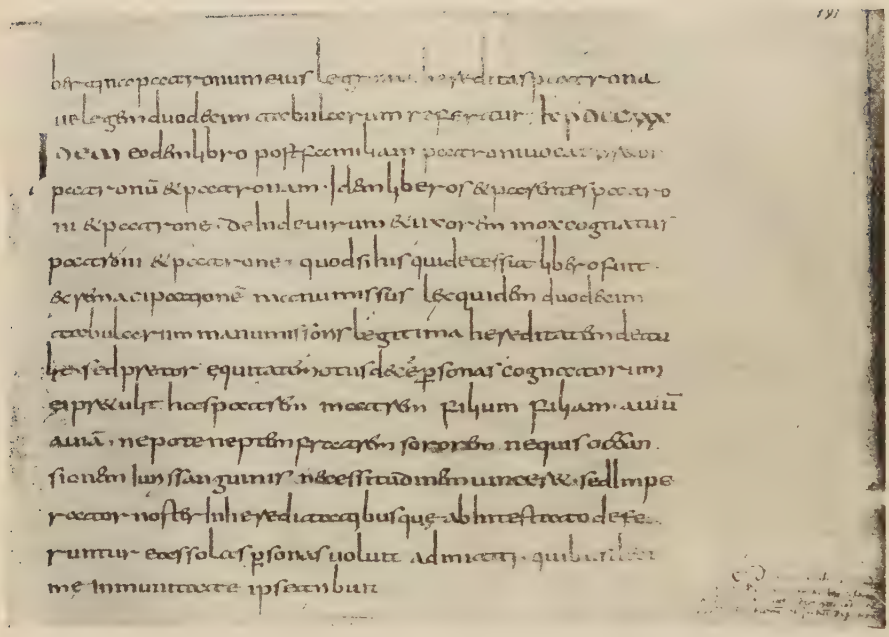
Line.
1. abunculus, b *for* u.
2. modum, *read* modo (*V.*, *W.*).
3. patrem, *read* patre.
6. patri, *read* patris; *for* causa, causam.
9. gradū, *read* gradu.
10. gradum, *read* gradu.
11 *and* 12. si sit frater defuncti et fratris filius et nepus, *M's. reading is* si sint defuncti fratris et filius et nepos.
12. fratres et non existentes, *read* fratre non existente (*V.*).
13. ꝑfertur, *read* praefertur (*V.*, *W.*).
15. uirium, *read* uiritim (*V.*).
16 *and* 17. consanguineas, *read* consanguineorum (*Huschke*).
17. admittantur, *read* admittuntur.
18. uoconia, *read* Voconiana; *for* rationem, ratione.
19. discreptationes, *read* discretione; *for* ex his, sexus.
20. cognatos, *M. omits, but Huschke reads* agnatos.
21. *Before* sub titulo *supply* Regularum, *added on margin by later hand.*
24. ceterosquę, *faulty cedilla.*
25. sint, *read* sunt (*M.*).
26. patrem, *read* patre; *after* agnatos *supply* proximos id est cognatos (*Blume from Ulpian*).
27. matres, *read* mares; *for* eisdem, eiusdem, *and for* his, id.
28. legem, *read* lege.
29. cuius, *read* cui suus (*Ulpian*); *for* est, escit (*Ulpian*), *and for* familia, familiam.
30. habeatur, *read* habeto (*Ulpian*); *for* eamdem, eadem.



duodecim tabulaR gentiles ad hereditatem uocant
his uerbis signatus nescit gentiles familiã heres hanc
nec gentilicia iura in usu sunt. KP DCCXXVIII
ITEM ab intestato. Institutionum ab intestato quoque
hereditas defertur. Aut p ius ciuile aut p pretoris bene
ficium p ius ciuile suis heredib3 uel liberis qui in potestate
fuerunt filii filię et deinceps qui in locũ defuncti paren
tis qui ex eodem nati sunt succedunt, KP DCCXXVIIII
ITEM eodem libro post suos ab intestato legitimę ad
mittuntur, primũ consanguinei sunt fratres et soror
qui in eisdem potestatem patres fuerunt. et si ex diuer
sis matribus nati sunt consanguineos et adoptio fa
cit, et adrogatio causę ꝓbatio. et in manu conuentio,
KP DCCXXX, ITEM eodem libro et consanguineis legi
timi uocantur hi sunt agnati qui nos p patris cogna
tionem contingunt uiris sexus nam sciendũ fęminis
ultra consanguineis hereditates legitimas non de
ferri suis prętor solet et mancipatus liberos, itemq;
ciuitatem donatus coniungere data bonorum
possessiones. hi tamen ut bona sit qua ꝓpria habent
his qui in potestate manserunt conferat, nam ęquis
simum putauit neque eos bonis paternis carere p hoc
qui non sunt in potestate, neque precipuã bonam
ꝓpria habere cum partem sint ablaturis suis hoc
redibus, KP DCCXXXI: ITEM LIBRO QUI SUPRA
de suis heredibus p̄ost agnatos pretor uocat
cognatos cognati aũ sunt qui nos p patrem aut
matrem contingunt post cognatos uirum et
uxorem. et hec si qui decessit non fuit libertinus
uel stirpis, libertinę cęterum si libertinus est uel li

Line.
1. uocant, *read* uocat.
2. signatus, *read* si agnatus (*Pithou*); *for* nescit, nec escit, *and after* familiam *add* habento nunc nec ullus est (*M.*). *For* hanc *read* hinc.
4. Item, *read* idem. ab intestato institutionum, *read* [libro] institutionum..... [sub titulo de sucessionibus] ab intestato.
7. *Before* filii, *M. inserts* qui sunt.
8. qui, *read* quia.
9. item, *read* idem. legitimę, *read* legitimi.
10. *Before* sunt *insert again* consanguinei (*Lenel*); fratres, *read* frater.
11. eisdem, *read* eiusdem; *for* potestatem, potestate; *for* patres, patris.
13. *After* adrogatio *insert* et; manu, *read* manum.

Line.
14. item, *read* idem; et, *M. deletes and reads* deficientibus.
16. uiris, *read* uirilis (*cf.* uirili, *W.*).
17. consanguineis, *read* consanguineas (B^b).
18. et mancipatus, *read* emancipatos.
19. ciuitatem donatus, *read* ciuitate donatos.
20. possessiones, *read* possessione; *for* hi *read* ita; *for* sit, si.
21. conferat, *read* conferant.
23. qui, *read* quod (*Boecking*); precipuã, *read* praecipua; *for* bonam, bona.
24. ablaturis, *read* ablaturi.
24 *and* 25. hoc redibus, *read* heredibus.
25. item *read* idem. *After* supra *add* sub titulo (*V., W.*).



bertina patronum eius legitima hereditas patrona
uę legem duodecim tabularum refertur. KP DCCXXX
IDEM eodem libro post familiam patroni uocat pretor
patronū et patronam. Idem liberos et parentes patro
ni et patronę. deinde uirum et uxorem mox cognatus
patroni et patronę quod si his qui decessit libero fuit
ex remacipationē manumissus lex quidem duodecim
tabularum manumissoris legitima hereditatem detu
lit sed pretor ęquitate motus decē psonas cognatorum
ęi pretulit has patrem matrem filium filiam, auiū
auiā, nepote neptem fratrem sororem ne quis occan
sionem iuris sanguinis necessitudinem uinceret sed impe
rator noster inhereditatibusquę ab intestato defe
runtur eas solas personas uoluit admitti, quibus deci
mę inmunitate ipse tribuit

Line.
1. patronum, *read* patrono.
1 *and* 2. patronauę, *read* patronaeue.
2. legem, *read* lege; *for* refertur, defertur.
4. idem, *M. reads* item, *Huschke retains*.
5. cognatus, *read* cognatos,
6. his = is; libero, *read* liber.

Line.
7. *Before* ex *M. inserts* nec: remacipationē, n *wanting before* c; *read*. remancipatione.
8. manumissoris, *read* manumissori; legitima, *read* legitimam.
10. auiū, *read* auum.
11. nepote „ nepotem.
11 *and* 12. occansionem, *read* occasione.
15. inmunitate, *read* inmunitatem.

TEXT OF THE COLLATIO,

WITH

TRANSLATION AND NOTES.

(LEX DEI QVAM PRAECEPIT DOMINVS AD MOYSEN.)

LIBER PRIMVS

(TITVLVS I.)

DE SICARIIS (ET HOMICIDIS CASV VEL VOLVNTATE).

1 1 1 MOYSES dei sacerdos haec dicit:

Si quis percusserit hominem ferro et occiderit eum, mortem
2 moriatur. si autem manu lapide, quo mori possit, percusserit et
3 mortuus fuerit, homicida est: mortem moriatur. si autem per
inimicitiam impulerit eum uel immiserit super eum aliquod ita ex
4 insidiis et mortuus fuerit, uel per iram percusserit eum manu et
mortuus fuerit, mortem moriatur.

1 2. 1 Paulus quoque libro quinto sententiarum sub titulo ad legem
Corneliam de sicariis et ueneficis dicit:

Lex Cornelia poenam deportationis infligit ei, qui hominem
occiderit eiusque rei causa furtiue faciendi cum telo fuerit, et qui
uenenum hominis necandi causa habuerit uendiderit paraverit
falsumue testimonium dixerit quo quis periret, mortisue causam
2 praestiterit. quae omnia facinora in honestiores poena capitis
uindicari placuit: humiliores uero aut in crucem tolluntur aut
bestiis subiciuntur.

1 3. 1 Ulpianus Libro VII. de officio proconsulis sub titulo de sicariis
et ueneficis:

Capite primo legis Corneliae de sicariis cauetur, ut is
praetor iudexue quaestionis, cui sorte obuenerit quaestio de
sicariis eius quod in urbe Roma propiusue mille passus factum

c. 2, 1 = *Paulus* v. 23, 1. *Cf. Cicero pro Cluentio* 54, 148: iubet lex *(Cornelia de sicariis)* . . . . iudicem quaestionis . . . . cum iis iudicibus qui ei obuenerint . . . . quaerere de ueneno . . . . quicumque fecerit uendiderit emerit habuerit dederit. quid eadem lex statim adiungit? . . . . "deque eius capite quaerito" *cet.*

c. 2, 2. *Paulus* v. 23, 2 *is restored from this passage.*

Lines 1-2. Circular brackets indicate, throughout, words not in the assumed Archetype.

Line 7. *dei sacerdos*. In the Bible Moses is never styled Priest, but always Servant of God. His brother Aaron and his descendants were appointed priests. *Dei sacerdos* may be a pointed contrast to *Iuris sacerdos*—a term applied to the Roman Jurist.

Lines 8-13. Numb. xxxv. 16: And if he smite him with an instrument of iron, *so that he die, he is a murderer*: the murderer shall surely be put to death.

17: And if he smite him with throwing a stone, wherewith he may die, and he die, he is a murderer: the murderer shall surely be put to death.

18: Or if he smite him with an *hand weapon of wood* wherewith he may die, and he die, he is a murderer: the murderer shall surely be put to death.

20: But if he thrust him of hatred or hurl at him, by laying of wait that he die:

THE LAW OF GOD WHICH THE LORD ORDAINED UNTO MOSES.

FIRST BOOK

FIRST TITLE.

OF ASSASSINS AND MANSLAYERS, WHETHER BY ACCIDENT OR WILFULLY.

MOSES the Priest of God says thus:

If one smite a man with an implement of iron, and slay him, let him surely die.

Or if he smite him with the hand, with a stone, wherewith he may die, and he die, he is a manslayer; let him surely die.

Or if in enmity he thrust at him or cast upon him some vessel from an ambush, and he die, or he smite him in anger with the hand and he die, let him surely die.

Paulus, also, in the Fifth Book of "The Sentences" under the Title "On the Lex Cornelia concerning Murderers and Poisoners," says:

The Lex Cornelia inflicts the punishment of deportation on one who has slain a human being; was in possession of a weapon for that purpose or for that of committing a theft; had sold, or procured, poison in order to kill a human being; gave false testimony to compass another's death, or in any other way occasioned death. It is settled law that all such crimes, committed by persons of honourable standing, are visited with the capital penalty. Offenders of the lower orders are crucified or thrown to the wild beasts.

Ulpian, in his "Pro-Consular Functions," Book VII., under the Title "Of Assassins and Poisoners":

In the First Chapter of the Lex Cornelia concerning Assassins, it is provided that the Praetor or investigating judge to whom the judicial inquiry *de sicariis* into acts committed at Rome or within a mile of the city has been assigned by lot, should,

PAGE 56, lines 8-13 *(cont.)*. 21: Or in enmity smite him with his hand that he die; he that smote him shall surely be put to death, for he is a murderer; ***the revenger of blood shall slay the murderer when he meeteth him.*** The italicised passages are omitted or condensed in the Collatio.

Line 9. ***manu lapide.*** Huschke reads ***manu lapideue,*** "with the hand or with the stone." This is not in accordance with the Septuagint, nor with the original Hebrew, ***Eben Yad,*** which means a big stone, that is grasped with the hand. (Rashi *in loco.*)

Lines 16, etc. Chap. 2 recurs in Title viii., chap. 4, on False Testimony, which was an offence under this *Lex Cornelia.*

sit, uti quaerat cum iudicibus, qui ei ex lege sorte obuenerint de capite eius, qui cum telo ambulauerit hominis necandi furtiue faciendi causa, hominemue occiderit, cuiusue id dolo malo factum erit. et reliqua.

I. 3, 2 Relatis uerbis legis modo ipse loquitur Vlpianus:

Haec lex non omnem, qui cum telo ambulauerit, punit, sed eum tantum, qui hominis necandi furtiue faciendi causa telum gerit, coercet. conpescit item eum, qui hominem occidit, nec adiecit cuius condicionis hominem, ut et ad seruum et peregrinum pertinere haec lex uideatur.

I 4, 1 Item Paulus libro qui supra, et titulo dicit:

Homicida est, qui aliquo genere teli hominem occidit mortisue causam praestitit.

DE CASVALIBVS HOMICIDIS.

I. 5, 1 Moyses legaliter dicit:

Si autem subito non per inimicitias inmiserit super eum
2 aliquod uas non insidians uel lapidem, quo moriatur, non per dolum et ceciderit super eum et mortuus fuerit, si autem non
3 inimicus eius fuerit neque quaesierit male facere ei, iudicabitis inter eum, qui percussit, et proximum mortui secundum iudicia
4 haec, et liberabitis percussorem.

I. 6, 1 Ulpianus libro et titulo qui supra relati:

Distinctionem casus et uoluntatis in homicidio seruari
2 rescripto Hadriani confirmatur. uerba rescripti: 'Et qui hominem occidit absolui solet, sed si non occidendi animo id admisit: et qui non occidit, sed uoluit occidere, pro homicida
3 damnatur. e re itaque constituendum est: ecquo ferro percussit Epafroditus? nam si gladium instrinxit aut telo percussit, quid

c. 6, *Marcian cites this Rescript, Digest.* xlviii. 8, 1, 3.

Lines 16-21. Num. xxxv. 22-25: "But if he thrust him suddenly without enmity, or have cast upon him anything without laying of wait, or with any stone wherewith a man may die, *seeing him not*, and cast it upon him, that he die, and was not his enemy, neither sought his harm: *then the congregation shall judge* between the slayer and the *revenger of blood, according to these judgments: and the congregation shall deliver the slayer out of the hand of the revenger of blood, and the congregation shall restore him to the city of his refuge, whither he has fled: and he shall abide in it unto the death of the High Priest, which was anointed with the holy oil.*" This law had long been obsolete. Since 70 C.E. the Jews had no criminal jurisdiction, and even before that date, as long as Palestine was under the Roman rule, they could not exercise it without the Procurator's consent. Hence, the compiler of the Collatio omits the references to the Avenger of Blood in this text as well as above in Num. xxxv. 21, and condenses the italicised passages.

together with the *iudices* legally assigned him by lot, enquire into the status of anyone who has gone about with a weapon for the purpose of commiting murder or theft, or has slain a man, or has wilfully caused this offence to be committed.

Ulpian quotes the terms of the law, and then in his own words continues:

This law does not punish the bearing of arms as such, but only where weapons are carried with the object of murder or theft. It likewise punishes the perpetrator of a murder, and adds no qualification concerning his status; hence, this law seems also to apply to a slave and a foreigner.

Paulus, in the Book and under the Title above quoted, says:

A homicide is one who has slain a man with any kind of weapon, or otherwise occasioned death.

CONCERNING ACCIDENTAL DEATHS.

Moses states the legal rule:

But if he cast a vessel upon one suddenly, not in enmity nor lying in wait,

Or a stone by which he may die, and it be not done wilfully, and it fall upon him and he die; if, however, he had not been his enemy, nor sought to harm him;

ye shall judge between him who smote and the next kinsman of the slain according to these judgments, and ye shall set the smiter free.

Ulpian, in the Book and under the Title above cited:

It is confirmed by a Rescript of Hadrian, that a distinction should be observed in homicide between accident and wilfulness.

Terms of the Rescript: One who has slain another is acquitted, provided that the deed was committed without intent to slay; while a man who did not slay but intended to slay is condemned as a homicide. The point must be determined by the facts. With what instrument did Epafroditus strike the blow? For if

dubium est, quin occidendi animo percusserit? si claue percussit aut cucuma aut, cum forte rixaretur, ferro percussit,
4 sed non occidendi mente. ergo hoc exquirite et si uoluntas occidendi fuit, ut homicidam seruum supplicio summo iure iubete affici.'

I. 7, 1 Paulus libro et titulo qui supra:

Qui hominem occidit, aliquando absoluitur et qui non occidit, ut homicida damnatur: consilium enim uniuscuiusque, non factum puniendum est. ideoque si cum uellet occidere, casu aliquo perpetrare non potuit, ut homicida punitur: et is, qui casu
2 [iactu] teli hominem inprudenter ferierit, absoluitur. quod si in rixa percussus homo perierit, quoniam ictus quoque ipsos contra unumquemque contemplari oportet, ideo humiliores in ludum aut in metallum damnantur, honestiores dimidia parte bonorum multati relegantur.

I. 8, 1 Item Gregorianus libro IIII. [sub titulo] ad legem Corneliam de sicariis et ueneficis talem constitutionem ponit:

Imperator Antoninus A. Aurelio Herculano et aliis militibus. Frater uester rectius fecerit, si se praesidi prouinciae optulerit: cui si probauerit non occidendi animo Iustam a se percussam esse, remissa homicidii poena secundum disciplinam militarem
p. C. 215 sententiam proferet. Proposita prid. kal. Febr. Laeto bis cons.

I. 9, 1 Item Gregorianus eodem titulo et libro talem constitutionem ponit:

Imp. Alexander A. Aurelio Flauio et aliis militibus. Si modo pro quo libellum dedistis, non dolo praestitit mortem, minime perhorrescat: crimen quippe ita contrahitur, si et uoluntas occidendi intercedat. ceterum ea, quae ex improuiso casu potius, quam fraude accidunt, fato plerumque, non noxae
p. C. 222 inputantur. Prop. XIII. kal. Aug. Alexandro cons.

c. 7, 1 = *Paulus* v. 23, 3.

c. 8 = *Cod. Iust.* ix. 16, 1, *which adds the words* (lines 27–30): crimen—inputantur.

c. 9, crimen . . . . inputantur *in Cod. Iust.* ix. 16, 1.

Line 4. *Supplicio summo.* Huschke has *supplicio crucis*. The *supplicium crucis*, though a common punishment among the Romans for slaves and the lower orders, was unknown among the Jews, whose modes of capital punishment were Stoning, Burning, Beheading and Strangling.

Line 11. *[iactu]*. Square brackets indicate, throughout, words omitted in the Codices and supplied by the Editors.

Lines 12, 13. *Quoniam ictus quoque ipsos contra unumquemque contemplari oportet.* Cf. *Dig.* xlviii. 8, *l.* 17, *Si in rixa percussus homo perierit, ictus uniuscuiusque in hoc collectorum contemplari oportet.*

Line 22. *Proferet.* Huschke reads *feret*, "He will receive sentence." Huschke argues that the reading *proferet*, "He shall pronounce sentence," would necessitate at the beginning of line 15 *qui si* instead of *cui si*.

he drew a sword or struck with any other lethal weapon, what doubt is there that he struck with intent to slay? If he struck with a key, a brazen pot, or an iron implement in a chance brawl, he struck with a weapon, but not with intent to kill.

Enquire, therefore, thoroughly into this point; and if there has been an intent to murder, sentence the slave to suffer the extreme penalty of the law as a homicide.

Paulus, in Book and Title as above:

A man who has slain another is sometimes acquitted, while one who has not slain is convicted as a homicide. In each and every case, the intent, and not the deed, is to be punished. Where, accordingly, one intended to kill and, through some chance, was unable to perpetrate the deed, he is punished as a homicide; but where one has killed a man unwittingly, by the chance throw of a weapon, he is acquitted.

Should, however, a man who has been struck in a brawl die, since it is our duty to take note of the actual blows given by each person, offenders of base degree are (in such cases) condemned to the gladiatorial contests or the mines, those of honourable rank forfeit half their property and are exiled.

The Gregorian Code, likewise, in the Fourth Book, under the Title, "On the Lex Cornelia concerning Assassins and Poisoners," gives the following constitution:

The Emperor Antoninus to Aurelius Herculanus and other soldiers: Your comrade would act more correctly if he gave himself up to the president of the province. If he satisfy him that he struck Justa with no murderous intent, the punishment for homicide will be remitted, and the President will pronounce sentence according to military regulations. Issued, the 31st of January, in the second consulship of Laetus.

The Gregorian Code, under the same Title and in the same Book, gives the following constitution:

The Emperor Alexander to Aurelius Flavius and other soldiers: If the party for whom you have forwarded a petition did not cause death wilfully, he need be under no apprehension, since a crime is only committed where the intent to kill enters into the deed. But acts which occur unexpectedly, by chance rather than of ill design, are generally ascribed to fate, and not counted to any one as guilt. Issued 20th July, in the consulship of Alexander.

I. 10, 1 Item Gregorianus eodem libro et titulo tale rescriptum dedit:

Exemplum s(acrarum) l(itterarum) dd. nn. Haue Agatho k(arissime) n(obis). Qualitas precum Iuli Antonini clementiam nostram facile commouit: quippe quod adseueret homicidium se non uoluntate, sed casu fortuito fecisse, cum calcis ictu mortis occasio praebita uideatur. quod si ita est neque super hoc ambigi poterit, omni eum metu ac suspicione, quod ex admissae rei discrimine sustinet, secundum id quod adnotatione nostra conprehensum est, uolumus liberari. Dat. prid. k. Decemb. Diocletiano Aug. IIII. p. C. 290 et Maximiano conss.

I. 11, 1 Ulpianus libro et titulo qui supra:

Cum quidam per lasciuiam causam mortis praebuisset, conprobatum est factum Taurini Egnati proconsulis Baeticae a 2 diuo Hadriano, quod eum in quinquennium relegasset. uerba consultationis et rescripti ita se habent: 'Inter Claudium, optime imperator, et Euaristum cognoui, quod Claudius Lupi filius in conuiuio, dum sago iactatur, culpa Mari Euaristi ita male acceptus fuerit, ut post diem quintum moreretur. atque adparebat nullam inimicitiam cum Euaristo ei fuisse. tamen cupiditatis culpa coercendum credidi, ut ceteri eiusdem aetatis iuuenes emendarentur. ideoque Mario Euaristo urbe Italia prouincia Baetica in quinquennium interdixi et decreui, ut impendi causa duo milia patri eius persolueret Euaristus, quod manifesta eius 3 fuerat paupertas.' V(erba) r(escripti): 'Poenam Mari Euaristi recte, Taurine, moderatus es ad modum culpae: refert enim et in maioribus delictis, consulto aliquid admittatur an casu.' et 4 sane in omnibus criminibus distinctio haec poenam aut iustam prouocare debet aut temperamentum admittere.

I. 12, 1 Modestinus libro differentiarum sexto sub titulo de scientibus et ignorantibus generaliter loquitur:

Nonnumquam per ignorantiam delinquentibus iuris ciuilis uenia tribui solet, si modo rem facti quis, non iuris ignoret: quae scilicet consilio delinquentibus praestari non solet. propter quod

c. 10 = *Cod. Iust.* ix. 16, 5, *varied thus:* Eum qui adseuerat—uideatur, si hoc — poterit, omni metu, *cet.* c. 11 = *Dig.* xlviii. 8, 4, § 1.

c. 11, 3 refert et — 4 admittere = *Dig.* xlviii. 19, 5, § 2, *as if they were all the words of Ulpian.*

Line 2. *Haue Agatho K(arissime) n(obis).* For similar forms of address cp. Haenel, Preface to his Edition of the Theodosian Code, p. xxxix., footnote 239.

Line 13. *Baeticae.* Baetica was the ancient designation applied to Andalusia and part of Granada.

Line 14. *Relegasset.* Relegation is a prohibition against entering one's province, or Rome, or any particular district, either for life or for a limited term. *Dig.* xlviii. 22, 14. It may also mean restriction to an island or to any particular place (*lata fuga.*) (*Dig. ibid.* 22, 7; *ibid.*, 22, 5). It involved no forfeiture of property or loss of status (*Dig. Ibid.* 22, 4, and 22, 18).

The Gregorian Code, in the Book and under the Title already quoted, has likewise given the following Rescript:

Copy of an Imperial Letter. "The Emperor's greetings to our well-beloved Agatho. The character of the petition of Julius Antoninus readily appealed to our clemency. For he urges that he committed the homicide not wilfully, but by pure accident, the death having apparently been caused by a kick of the heel. If this is so, beyond the possibility of a doubt, we desire that he be relieved, in accordance with the contents of our note, of all the fear and apprehension under which he labours owing to the grave character of his act." Issued 30th November, in the fourth year of the Emperor Diocletian, and in the Consulship of Maximian.

Ulpian, in the Book and under the Title above cited:

A certain man having, in a frolic, caused another's death, Taurinus Egnatius, Pro-Consul of Baetica, sentenced him to five years' exile. The sentence was approved by the Emperor Hadrian.

The terms of the case remitted to the Emperor, and of the latter's Rescript, are as follows: "Your Imperial Majesty, I had before me the following case of Claudius and Evaristus. Claudius, the son of Lupus, while being tossed in a cloak at a banquet, was, through Marius Evaristus' fault, so roughly handled that, five days after, he died. It was clear that there was no ill-will between him and Evaristus. Nevertheless, I thought that recklessness should be checked, so that other young men of the same age might mend their ways. I therefore banished him for five years from Rome, Italy, and the province of Baetica, and ordered him to pay 200 sestertia as costs to the deceased youth's father, whose poverty was manifest."

The terms of the Rescript: "You have acted rightly, Taurinus, in mitigating the penalty (and adjusting it) to the character of the offence; for even in the more serious classes of delicts, it is of moment whether a thing was done designedly or by accident, and in all crimes this difference will necessarily require the infliction of the full penalty or permit of a mitigation."

Modestinus, in the Sixth Book of "Distinctions," under the Title "Of Those who Act Willingly or in Ignorance," says in general terms:

Those who have committed offences in ignorance are sometimes pardoned by the civil law, provided the ignorance was of

necessarium est addita distinctione considerare, utrum sciente an ignorante aliquo quid gestum proponatur. et reliqua.

I. 13, 1 Paulus libro et titulo qui supra:

Qui telum tutandae salutis causa gerit, non uidetur hominis
2 occidendi causa portare. teli autem appellatione non tantum ferrum continetur, sed omne, quod nocendi causa portatum est.

(TITVLVS II.)

DE ATROCI INIVRIA.

II. 1, 1 Moyses dicit:

Si autem contenderint duo uiri et percusserit alter alterum lapide aut pugno et non fuerit mortuus, decubuerit autem in
2 lectulo, et si surgens ambulauerit homo foris in baculo, sine crimine erit ille, qui eum percusserat praeter ac cessationis eius mercedem dabit ei et medico inpensas curationis.

II. 2, 1 Ulpianus libro singulari regularum sub titulo de iniuriis:

Iniuria, si quidem atrox, id est grauis, non est, sine iudicis arbitrio aestimatur. atrocem autem aestimare solere praetorem idque colligi ex facto, ut puta si uerberatus uel uulneratus quis fuerit. et reliqua.

II. 3, 1 Papinianus libro definitionum secundo sub titulo de iudicatis:

Per hominem liberum noxae deditum si tantum adquisitum sit, quantum damni dedit, manumittere cogendus est a praetore qui noxae deditum accepit: sed fiduciae iudicio non tenetur.

c. 13, 1 = *Dig.* xlviii. 6, 11, § 2. *Paul.* v. 23, 7 *is restored from this passage.*

c. 13, 2. *Paul.* v. 23, 7 *is restored from this passage.*

Lines 10-14. Exod. xxi. 18-19: "And if men strive together and one smite another with a stone or with his fist, and he die not, but keepeth *his* bed" [the Latin of the Collatio, *decubuerit*, is nearer to the Hebrew, which means "and fall on his bed"]; "If he rise again and walk abroad upon his staff, then shall he that smote him be quit; only he shall pay for the loss of his time and shall cause him to be thoroughly healed."

Line 12. *Foris.* The reading *fortis* in all the MSS. may point to the Rabbinical exegesis which interprets the phrase על משענתו, usually translated "on his staff" as meaning "in sound health and strength." If so, the author of the Collatio, by giving, according to the MSS., *fortis in baculo*, has combined the two opposite renderings of the same Hebrew phrase, and omitted to translate the word בחוץ.

Line 14. *Et medico inpensas curationis.* So Targum of Onkelos, ואגר אסיא ישלם "He shall pay the doctor's fee." The assailant is not to give the injured man a sum of money for treatment which the sufferer may expend for any purpose he pleases. He is only liable for the costs of medical advice and treatment actually incurred. (*Nachmanides in loco.*)

the fact and not of the law. For pardon is naturally not extended to such as offend intentionally. It is therefore essential, bearing this distinction in mind, to consider whether an act is stated to have been done knowingly or unwittingly, etc.

Paulus, in the Book and under the Title above cited:

Whosoever carries arms for self-protection is not regarded as carrying them for the purpose of committing homicide.

The term weapon (*telum*) denotes not merely an implement of steel, but anything carried for the purpose of causing injury.

SECOND TITLE.

CONCERNING OUTRAGE.

Moses says:

If two men strive together and one strike the other with a stone or with the fist, and he die not but take to his bed;

And if the man arise and go about abroad on a staff, he who hath struck him shall be guiltless, except that he shall recompense him for his enforced idleness, and pay the physician the cost of healing.

Ulpian, in his Single Book of Rules, under the Title "Of Injuries":

An injury, if it is not outrageous, that is, of an aggravated character, is assessed for damages without recourse to the *judex* for decision. Where it is of an outrageous character, the Praetor usually assesses the damages. This is gathered from the facts of the case, as, for example, when a man has been beaten or wounded.

Papinian, in the Second Book of the Definitions, under the Title "Of Those Adjudged":

If a free man, surrendered in a noxal action, in satisfaction of judgment, acquired for his master the equivalent of the damages he caused, the master who accepted him in noxal surrender is to be compelled by the Praetor to release him, but is not liable in a fiduciary action.

Page 64, lines 16-17. *Sine iudicis arbitrio.* Does this refer to the Praetor? In cases of ordinary *iniuria*, the Praetor allows the sufferer to claim a specific sum; and the judge condemns the wrong-doer to pay any sum not exceeding this, to be fixed at his discretion. (Gaius iii. 224; Just. Inst. iv. 4, 7.)

Lines 22-25. Cp. Gaius iv. 75-81.

Lines 24-25. *Sed fiduciae iudicio non tenetur.* The surrender of the free man had not been in *fiducia* (as *e.g.* in the mancipation by a father of a son with a condition of re-mancipation, Gaius i. 140), and consequently there can be no fiduciary action. Whether a noxal surrender by a father of a son was analogous to a mancipation was disputed. (Gaius iv. 79.)

II, 4, 1 Ulpianus libro XVIIII. ad edictum sub titulo si fatebitur iniuria occisum esse, in simplum et cum diceret:

Rupisse eum utique accipiemus, qui uulnerauerit, uel uirgis uel loris uel pugnis caedit, uel telo quoue alio uis genere sciderit hominis corpus uel tumorem fecerit: sed ita demum, si damnum datum est. ceterum si in nullo seruum pretio uiliorem deteriorem ue fecerit, Aquilia cessat iniuriarumque erit agendum. ergo et si pretio quidem non sit deterior factus seruus, uerum sumptus in salutem eius et sanitatem facti sunt, in haec nec mihi uideri damni Aquilia lege [agi] posse.

II, 5, 1 Paulus libro singulari et titulo de iniuriis:

Generaliter dicitur iniuria omne, quod non iure fit: specialiter alia est contumelia, quam Graeci [ὕβριν appellant, alia culpa, quam Graeci ἀδίκημα dicunt, sicut in lege Aquilia damnum iniuriae accipitur, alia iniquitas et iniustitia, quam Graeci] ἀδικίαν uocant. nam cum praetor non iure aduersum nos pronuntiat, iniuriam nos accepisse dicimus: unde apparet non esse uerum, quod Labeo putabat, apud praetorem iniuriam ὕβριν dumtaxat
2 significare. commune omnibus iniuriis est, quod semper aduersus
3 bonos mores fit idque non fieri alicuius interest. hoc edictum ad
4 eam iniuriam pertinet, quae contumeliae causa fit. fit autem iniuria uel in corpore, dum caedimur, uel uerbis, dum conuicium patimur, uel cum dignitas laeditur, ut cum matronae uel
5 praetextatae comites abducuntur. iniuriarum actio aut legitima

c. 4 = *Dig.* ix, 2, 27, 17.

Line 2. *Et cum diceret.* So the MSS. (*B.V.*); *et cum dicere* (*W.*). The superscription (Lines 1 and 2) with the different ending in the MSS. *cum doceret* (*B,W.*), *cum docere* (*V.*), recurs xii. 7, 1. Huschke conjectures *ut condiceret*: and the meaning of the passage would be, if the defendant admits that the plaintiff's slave or quadruped had been unlawfully slain by him, the plaintiff should claim simple damages. *Ut condiceret* would be the conclusion of the terms in the edict on which Ulpian comments. Lenel (*Zeitschrift der Savigny-Stiftung Röm.Abteilung*, viii. 195) has rejected this reading. Mommsen explains *et cum diceret* to mean "Ulpian also says." This is not convincing.

Lines 5 and 6. *Si damnum datum est*, that is material loss, deterioration of value.

Line 7. *Aquilia cessat.* The terms of the first clause of the *Lex Aquilia* are preserved in the Digest (ix. 2, *l*, 2). *Qui seruum seruamue alienum alienamue, quadrupedem ue pecudum iniuria occiderit, quanti id in eo anno plurimi fuit, tantum aes dare domino damnas esto.* The third clause made provision for other damage (Gaius iii,, 217). The *Lex Aquilia*, when the facts were traversed, gave double damages (Gaius iii. 216).

Line 11. *Singulari et.* Huschke suggests in his notes that the passage here and also further on (ii. 6, 1), ought to be V. Regular Sub, "In the fifth book of Rules, under the title *de iniuriis*." His grounds are that, while all the books mentioned in the Collatio are cited elsewhere, we have no reference in any other work to a book *de iniuriis* by Paulus; and that the very passage here quoted occurs in Paulus, Rules, v. 4 at the beginning.

Ulpian, in the Eighteenth Book on the Edict, under the Title "In confessions of wrongful slaying, simple damages are claimed," and where he says:

We shall regard as "breaking" all cases of wounding, beating with rods, thongs or fists; cutting another's body with a weapon or any other implement, or causing a swelling; but only when damage has been caused. But if the value of the slave has in no wise been diminished, an Aquilian action does not lie; the action which will apply will be one for outrage. On this principle, where there has been no deterioration in the value of the slave, but expenses have been incurred in order to restore him to sound health, an Aquilian action for damages cannot, in my opinion, be brought.

Paulus, in his Single Book, and under the Title "Of Injuries":

The term *Iniuria* denotes generally anything done unlawfully. Specifically it may either mean insult, called by the Greeks ὕβρις; fault, which the Greeks call ἀδίκημα, and which is the sense in which the phrase *damnum iniuriae* in the Lex Aquilia is taken; or iniquity and injustice, which the Greeks term ἀδικία; for when the Praetor decides against us, not according to the law, we say that we have suffered an injury. Hence it is clear that Labeo is incorrect in his view that the term *iniuria*, when used by the Praetor, is exclusively restricted to insult. A common element of all injuries is that they always offend against morality, and that it is to someone's interest that they should not occur. This Edict applies to that particular class of injury which is in the nature of insult.

We are injured either in body when we are beaten, or by words when we suffer abuse, or when honour is wounded, as when a lady's companions or those of a girl are abducted.

An action for outrage is statutory or praetorian. A statutory

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Page 66, line 13. *Alia culpa.* Poste, in his edition of Gaius, p. 15, has a different classification. "Negligent violation of the Law (*culpa*, ἁμάρτημα) is distinguished on the one side from misadventure (*casus*, ἀτύχημα), and, on the other, from intentional violation of the Law (*dolus*, ἀδίκημα), which again is distinguished from deliberate violation of the Law (ἀδικία)."

Line 22. *Uerbis.* Huschke has *auribus.* This emendation makes the passage more symmetrical: an outrage to the body by an assault, to the sense of hearing by a shout, and to the sentiment of honour by abduction of companions. According to the text, *uerbis* should have as its parallel in the first clause *corpore*, instead of *in corpore.* In support of his view, that the classification of Paulus follows the nature of the injury and not the mode of its infliction, Huschke quotes Auct. ad Her. 4, 25: "*Iniuriae sunt, quae aut pulsatione corpus aut conuicio aures, aut aliqua turpitudine uitam alicuius uiolant.*"

est aut honoraria. legitima ex lege duodecim tabularum: 'qui iniuriam alteri facit, quinque et uiginti sestertiorum poenam subito.' quae lex generalis fuit: fuerunt et speciales, uelut illa: 'si os fregit libero, CCC [si] seruo, CL poenam subito sestertiorum.'

II. 6, 1 Idem Paulus eodem libro singulari sub titulo quemadmodum iniuriarum agatur:

'Qui autem iniuriarum,' inquit, 'agit, certum dicat, quid iniuriae factum sit et taxationem ponat non minorem quam
2 quanti uadimonium fuerit.' certum dicit, qui suo nomine demonstrat iniuriam, neque ita, ut per disiunctionem hoc aut illud accidisse conprehendat, sed ut necesse habeat aut unam nomine suo rem designare aut plures ita conplecti, ut omnes eas accidisse
3 cogatur probare. certum autem an incertum dicat, cognitio ipsius praetoris est. demonstrat autem hoc loco praetor non uocem
4 agentis, sed qualem formulam edat. certum non dicit, qui dicit pulsatum se siue uerberatum. sed et partem corporis demonstrat et quem in modum, pugno puta an fuste an lapide, sicut formula proposita est: 'quod Auli Ageri mala pugno percussa est.' illud non cogitur dicere, dextra an sinistra, nec qua manu percussa sit.
5 item si dicat infamatum se esse, debet adicere, quemadmodum infamatus sit. sic enim et formula concepta est: 'quod Numerius Negidius libellum misit Aulo Agerio infamandi causa.'

II. 7, 1 Paulus libro sententiarum [quinto] sub titulo ad legem Corneliam de sicariis et ueneficis:

Causa mortis idonea non uidetur, cum caesus homo post aliquot dies officium diurnae uitae retinens decessit nisi forte fuerit ad necem caesus aut letaliter uulneratus.

c. 7. *Paulus* v. 23, 5 *is restored from this passage.*

Line 6. *Eodem libro singulari.* See above, note on page 66, line 11.

Line 9. *Non minorem.* Otherwise he would not be able to claim a larger amount from the defendant, or on his failure to pay, from the security (Gaius iv. 57). Huschke's reading is *non maiorem.* Though condemned by Mommsen, it seems more reasonable. If the plaintiff claimed more and was awarded less than the amount fixed by the *praetor* as *uadimonium*, he might in an action against the security be non-suited on the ground of *plus petitio.*

Lines 24-28. The closing paragraph belongs, according to Huschke, to Title i., but as the distinction it expresses is also found in the Biblical text at the beginning of Title iii., it was placed by an unthinking scribe after that text whence it was transferred to its present position. It may be urged with equal plausibility that the right place of this paragraph is at the beginning of Title ii., but was placed at the end of the title owing to the analogy with the succeeding Biblical text in the next title.

action is based on the following law of the XII Tables: "He who hath done wrong to another, let him suffer a penalty of twenty-five sesterces." This was a general law. There were also specific laws such as the following: "If one hath broken a limb of a free man, let him suffer a penalty of three hundred sesterces; if of a slave, one hundred and fifty sesterces."

The same Paulus, in the same Single Book, under the Title of "Procedure in Actions for Outrage":

The plaintiff in an action for outrage must state exactly the nature of the outrage committed, and must set down as damages a sum not less than the amount of the security.

An exact statement is where the plaintiff indicates the injury by its proper name; not so, however, when he uses a term which implies alternatively that either this or that happened to him; but it is essential that he should designate each thing by its proper name; or if he includes several things in one designation, he will be under the necessity of proving that they all happened. It lies within the Praetor's jurisdiction to determine whether the statement is exact or not. At this stage, however, the Praetor does not set forth the plaintiff's case, but merely settles the formula he will issue.

It is not an exact statement to say that he has been beaten or thrashed, but he must also indicate which part of the body was struck, and in what way; whether, for example, with the fist, a cudgel or a stone, as is set forth in the formula: "Whereas Aulus Agerius (the plaintiff) was struck on the cheek by Numerius Negidius (the defendant) with the fist." He is not, however, bound to state on which cheek, whether on the right or left, nor with which hand he was struck.

Again, if he asserts that his character has been defamed, he must add in what way it was defamed, for the formula too is thus framed: "As Numerius Negidius (defendant) sent a lampoon to Aulus Agerius (plaintiff) with the intent to defame him."

Paulus, in the Fifth Book of "The Sentences," under the Title "On the Cornelian Law concerning Assassins and Poisoners":

It is not regarded as a direct cause of death when a person who has been assaulted dies after the lapse of some days, during which he has carried on his daily occupation, except where one was beaten to death or mortally wounded.

Page 68, lines 27-28. *nisi forte fuerit ad necem caesus aut letaliter vulneratus.* In such a case the wounding would be considered the cause of death, although the victim lingered for some time.

(TITVLVS III.)

DE IVRE ET SAEVITIA DOMINORVM.

III. 1, 1 Moyses dicit:

Si quis percusserit seruum aut ancillam uirga et mortuus
2 fuerit in manibus eius, iudicio uindicetur. quod si superuixerit die uno aut duobus, non uindicabitur, pretium enim ipsius est.

III. 2, 1 Paulus libro sententiarum [quinto] sub titulo ad legem Corneliam de sicariis et ueneficis dicit:

Seruus si plagis defecerit, nisi id dolo fiat, dominus homicidii reus non potest postulari: modum enim castigandi et in seruorum coercitione placuit temperari.

III. 3, 1 Ulpianus libro octauo de officio proconsulis sub titulo de dominorum saeuitia:

Si dominus in seruum saeuierit uel ad inpudicitiam turpemque uiolationem conpellat, quae sint partes praesidis, ex rescripto diui Pii ad Aurelium Marcianum proconsulem Baeticae manifes-
2 tatur. cuius rescripti uerba haec sunt: Dominorum quidem potestatem in suos seruos inlibatam esse oportet nec cuiquam hominum ius suum detrahi: sed dominorum interest, ne auxilium contra saeuitiam uel famen uel intolerabilem iniuriam denegetur
3 his, qui iuste deprecantur. ideoque cognosce de querellis eorum, qui ex familia Iuli Sabini ad statuam confugerunt, et si uel durius habitos, quam aequum est, uel infami iniuria adfectos cognoueris, uenire iube, ita ut in potestatem Sabini non reuertantur. quod si meae constitutioni fraudem fecerit, sciet me admissum seuerius
4 executurum. diuus etiam Hadrianus Umbram quandam matro-

c. 2. *Paulus* v., 23, 6 *is restored from this passage.*
c. 3 = *Dig.* i., 6, 2.

Lines 4-6. Exod. xxi. 20, 21: "And if a man smite his servant or his maid with a rod, and he die under his hand, he shall be surely punished. Notwithstanding, if he continue a day or two he shall not be punished, for he is his money."

Line 5. *Uindicetur* is nearer to the Hebrew, נָקֹם יִנָּקֵם "Let him surely be avenged," than the rendering in the Authorised Version, "Let him be punished."

Line 10. *Enim.* The connection between the two sentences by the word *enim* is difficult. Hence Cramer's emendation *et si*, that is to say, even though masters must exercise moderation in the chastisement of their slaves, still where there was no intent to kill, the punishment of slaves, resulting in death, is not murder. Huschke suggests *tamen:* "nevertheless the punishment of slaves should be moderate." Mommsen thinks that after *temperari* some such words as the following have dropped out: *sed tamen etsi eum dominus excessit homicidium non commisit.*

Line 23. *Infami.* According to the Berlin Codex *infamiae*; the sense is "have been starved."

THIRD TITLE.

OF THE LEGAL POWER AND CRUELTY OF MASTERS.

Moses says:

If anyone smite his manservant or his maidservant with a rod and he die under his hand, let him be avenged by process of law; but if the slave survive for one or two days, he shall not be avenged, for he is his master's money.

Paulus, in the Fifth Book of "The Sentences," under the Title "Of the Lex Cornelia concerning Assassins and Poisoners," says:

If a slave die of a scourging, the master cannot be charged with murder, unless there was an intent to kill; for it is settled that, even in the correction of slaves, the measure of punishment must be kept within bounds.

Ulpian, in the Eighth Book of "The Proconsular Functions," under the Title "Of the Cruelty of Masters":

Where a master has behaved with cruelty to his slave, or forces him into a life of shame and vice, the duty of the Provincial President is clearly set forth in the Rescript of the late Emperor Antoninus Pius to Aurelius Marcian, Proconsul of Baetica.

The terms of the Rescript are as follows: The power of masters over their slaves ought to remain unimpaired, nor should any man's rights be taken from him; but it is in the interest of the masters that relief from cruelty, hunger, or intolerable outrage should not be refused to those who justly cry out.

Take cognisance, therefore, of the complaints of those members of Julius Sabinus' household who have fled for protection to the statue (*i.e.* of the Emperor). And if you will find that they have been treated with undue harshness or subjected to an infamous outrage, order them to be sold with the stipulation that they are never to return into Sabinus' power. If he evades this my ordinance, he will learn that I shall deal more severely with the offence.

The late Emperor Hadrian sentenced a certain lady called Umbra to five years' relegation because she had, for trivial reasons, treated her maids with great brutality.

nam in quinquennium relegauit, quod ex leuissimis causis ancillas
III. 3, 5 atrocissime tractaret. item diuus Pius ad libellum Alfi Iuli
rescripsit [in] haec uerba: 'Seruorum obsequium non solum im-
perio, sed et moderatione et sufficientibus praebitis et iustis
6 operibus contineri oportet. itaque et ipse curare debes iuste ac
temperate tuos tractare, ut ex facili requirere eos possis, ne, si
apparuerit uel inparem te inpendiis esse uel atrociore domina-
tionem saeuitia exercere, necesse habeat proconsul u. c., ne quid
tumultuosius contra accidat, praeuenire et ex mea iam auctoritate
a. 152 [te] ad alienandos eos conpellere. Glabrione et Homullo cons.'
III. 4, 1 Gregorianus libro XVIIII. sub titulo de accusationibus:

Impp. Diocletianus et Maximianus Augusti Aurelio Sacrato militi. Cum seruum tuum [ui] aegritudinis grauiter oppressum fati munus implesse proponas, propter inmoderatam castigationem calumniae accusationem emergere innocentiae ratio, cuius
a. 285 fiduciam geris, non permittit. Prop. non. Decemb. Diocletiano A. III. et Aristobulo cons.

(TITVLVS IIII.)

DE ADVLTERIIS.

IV. 1, 1 Moyses dixit:

Quicunque moechatus fuerit mulierem proximi sui, mortem
2 moriatur qui moechatus fuerit et quae moechata fuerit. quod si
aliqui seduxerit uirginem non desponsatam et stuprauerit eam,
3 dotabit eam sibi in uxorem. quod si rennuerit pater eius et
noluerit eam dare illi uxorem, pecuniam inferet patri, in quantum
est dos uirginis.

IV. 2, 1 Paulus libro singulari de adulteris sub titulo:

Breuem interpretationem [legis Iuliae] de adulteris coercendis facturus per ipsa capita ire malui ordinemque legis seruare.
2 et quidem primum caput legis (Iuliae de adulteris) prioribus

Lines 21-26. Lev. xx. 10: "And the man that committeth adultery with another man's wife, even he that committeth adultery with his neighbour's wife, the adulterer and the adulteress shall surely be put to death."

Exod. xxii. 16, 17: "And if a man entice a maid that is not betrothed, and lie with her, he shall surely endow her to be his wife. If her father utterly refuse to give her unto him, he shall pay money according to the dowry of virgins."

Line 27. *libro singulari*, etc. Blume suggests *libro singulari et titulo de adulteriis*. Huschke suggests *initio* instead of *titulo*, and also thinks that in chaps. 3, 4, and 6, the copyist thoughtlessly repeated the error *et titulo*.

The late Emperor Antoninus Pius likewise sent a Rescript in the following terms in reply to an enquiry from Alfius Julius: The obedience of slaves must be maintained not merely by the exercise of authority, but by reasonable treatment satisfaction of their necessities, and a fair apportionment of tasks.

You should, on your part, therefore, take care to treat your slaves fairly and with moderation, so that you may without difficulty be able to claim them back. Otherwise, on its appearing that their maintenance is beyond your resources, or that you exercise authority with revolting cruelty, the Proconsul may be under the necessity of preventing the mischief of a possible outbreak by forcing you, with my sanction, to part with your slaves. In the Consulship of Glabrio and Omullus.

The Gregorian Constitution, Book XVIII., under the Title "Of Accusations."

The Emperors Diocletian and Maximian to the soldier Aurelius Sacratus: Since you set forth that your slave died a natural death as the result of a severe illness, regard for your innocence, for which you pledge your faith, forbids that a prosecution for malice on account of excessive punishment should be entertained. Issued 5th December, in the Third Year of the Emperor Diocletian and in the Consulship of Aristobulus.

FOURTH TITLE.

OF ADULTERIES.

Moses said:

Whoever committeth adultery with his neighbour's wife, let him surely die, he that committeth adultery and the adulteress.

If anyone seduce a virgin who is not betrothed and defile her, he shall endow her to be his wife.

If her father refuse, and will not give her to him for a wife, he shall pay money to the father according to the dowry of the virgin.

Paulus, in his Single Book of "Adulteries," under the Title:

In writing a short commentary on the Lex Julia concerning the punishment of adulterers, I preferred to go through the chapters themselves, and to follow the order of the Statute.

The first chapter of the Statute repeals several earlier enactments.

IV. 2, 3 legibus pluribus obrogat. secundo uero capite permittit patri, [si in] filia sua, quam in potestate habet, aut in ea, quae [eo] auctore, cum in potestate esset, uiro in manum conuenerit, adulterum domi suae generiue sui deprehenderit isue in eam rem socerum adhibuerit, ut is pater eum adulterum sine fraude occidat,
4 ita ut filiam in continenti occidat. in sui iuris autem filia qui adulterum deprehensum occiderit et in continenti filiam, licito iure hoc factum Marcellus libro XXXI. digestorum scribit.
5 auctoritate quoque [legis] patrem posse interficere uel consularem uirum uel patronum suum, [si eum] in filia adulterum deprehen-
6 derit, eodem libro Marcellus probat. sed si filiam non inter-
7 fecerit, sed solum adulterum, homicidii reus est. et si interuallo filiam interfecerit, tantundem est, nisi persecutus illam interfecerit: continuatione enim animi uidetur legis auctoritate fecisse.

IV 3, 1 Idem Paulus eodem singulari libro et titulo:

Certae autem enumerantur personae, quas uiro liceat occidere in adulterio deprehensa uxore, quamuis uxorem non liceat.
2 ergo secundum leges uiro etiam filiofamilias permittitur domi suae deprehensum adulterum interficere seruum, et eum qui auctoramento rogatus est ad gladium, uel etiam illum qui operas
3 suas, ut cum bestiis pugnaret, locauit. sed et iudicio publico damnatum licet interficere in adulterio deprehensum, uel libertinum uel suum uel paternum, et tam ciuem Romanum quam
4 Latinum. sed et patris et matris et filii et filiae libertum per-
5 mittitur occidere, quo loco et dediticius habetur. debet autem

Lines 7 and 8. *Licito iure.* Huschke supplies *non* before *licito iure*; Cujas suggests *illicito iure.* Both emendations are on the ground that the daughter in this case is *sui iuris.* Cp. *Digest* xlviii. 5, *l.* 20, *Patri datur ius occidendi adulterum cum filia quem in potestate habet.* But this is Papinian's view, from which Marcellus may have differed.

Line 9. *auctoritate quoque [legis] patrem*; Huschke reads *at de auctoritate quemque patrem:* "And as regards the adulterer's rank, the father may kill," etc. Cp. below in this title, chap. 12, § 1, *Cuiusque dignitatis;* for the law, cp. *Digest* xlviii. 5, *l.* 24, *pr.*, and § 3; also *ibid.*, *l.* 38, § 9.

Line 13. *Nisi persecutus illam interfecerit:* Cp. below in this title, chap. 9: *plane si filia non uoluntate patris, sed casu seruata est*, etc. Also *Digest* xlviii. 5, *l.* 23., § 4; *ibid.*, *l.* 32, *pr.*

Line 15. *et titulo.* See note to page 72, *line* 27.

Line 18. *Secundum leges.* Huschke suggests *secundum legis (uerba)*, "according to the terms of the statute." Cp. *Zeitschr. für R.W.*, xiii., p. 34; and below in this title chap. 12, § 2, *uerbis quidem legis prope est.*

Lines 18-19. *Domi suae deprehensum*; but the husband has not the right of killing the adulterer if he finds him in the house of his father-in-law. *Digest* xlviii. 5, *l.* 24, *pr.*, *non etiam soceri.*

Line 21. *cum bestiis pugnaret locauit.* Huschke thinks that here probably the following passage has dropped out: *quiue leno fuit, quiue artem ludicram ante fecit, inue scenam saltandi cantandiue causa prodiit* (*Digest* xlviii. 5, *l.* 24, *pr.*).

The second chapter enacts that if a father, either at his own house or at that of his son-in-law who has applied to him in the matter, has caught anyone committing adultery with his daughter, she being at the time in his power or having passed, with his sanction, out of his power into that of her husband, he is permitted to slay the adulterer without risk of prosecution, provided that he slays the daughter immediately.

If a father kills a man taken in adultery with his daughter, who is *sui iuris*, and kills his daughter at the same time, Marcellus, in the Thirty-first Book of his "Digest," writes that the act is lawful.

Marcellus, in the same Book, shows that a father has also the sanction of the law to kill a man of consular rank or his own patron, should he take him in adultery with his daughter.

But if he does not kill the daughter but only the adulterer, he is guilty of murder.

And the law is the same if he kill the daughter after an interval, unless he pursue her and kill her; for where the father had a continuing intention, he is regarded as having acted with legal sanction.

The same Paulus, in the same Single Book and Title:

Certain classes of persons are enumerated whom the husband may kill when the wife is taken in adultery (with any of them), though he may not kill her.

Thus the husband, even if he is a *filius familias*, is permitted, according to the Statutes, to kill a man whom he has taken in adultery in his house, if the adulterer is a slave, a paid gladiator, or one who has let out his services to fight with wild beasts, or has been convicted on a criminal charge, or is a freedman, whether his own or his father's, and whether a Roman or a Latin citizen.

Moreover, he is permitted to kill the freedman of his father, mother, son or daughter; and this class also includes a freedman with the status of an enemy surrendered at discretion.

PAGE 74, line 22. *Libertinum:* Huschke has instead *libertum uxoris*. The meaning of the whole passage would be, "his wife's or his freedman, or the freedman of either his or her father."

Line 25. *Quo loco et deditícius habetur.* The *deditícius* was created by the *Lex Aelia Sentia*, passed in the year 4 C.E., and could not have been mentioned in the *Lex Julia*, the date of which is 18 B.C. But the *deditícius* was a *quasi-Romanus* or a *quasi-Latinus ciuis*. Hence the phrase *quo loco et deditícius habetur*. Huschke would place this passage at the end of § 3.

profiteri apud eum, cuius iurisdictio est eo loco, ubi occidit, et uxorem dimittere. quod si non fecerit, inpune non interficit.

IV. 3, 6 sciendum est autem diuum Marcum et Commodum rescripsisse eum qui adulterum inlicite interfecerit, leuiori poena puniri. sed et Magnus Antoninus pepercit, si qui adulteros inconsulto calore ducti interfecerunt. et reliqua.

IV. 4, 1 Idem Paulus eodem libro singulari et titulo:

Iure mariti uel patris qui accusat, potest et sine calumniae poena uinci: si iure extranei accusat, potest calumniae poena

2 puniri. sed tum post duos menses intra quattuor menses utiles expertus, licet talis sit, qui alias accusare non possit, ut libertinus aut minor uiginti quinque annorum aut infamis, tamen ad accusationem admittitur, ut et Papinianus libro XV. scripsit.

IV. 5, 1 Papinianus libro XV responsorum sub titulo ad legem Iuliam de adulteris:

Ciuis Romanus, qui [ciuem Romanam] sine conubio siue peregrinam in matrimonio habuit, iure quidem mariti eam adulteram non postulat, sed ei non opponetur infamia uel quod libertinus rem sestertiorum triginta milium aut filium non habuit, propriam iniuriam persequenti.

IV. 6, 1 Paulus libro singulari et titulo qui supra:

In uxorem adulterium uindicatur iure mariti, non etiam sponsam. Seuerus quoque et Antoninus ita rescripserunt.

Line 1. *Profiteri:* after this word Huschke supplies (*rem*). Cp. the phrase *testandae eius rei causa* (*Digest* xlviii. 5, *l.* 25, *pr.*). The passage below in this title, chap. 12, § 5. *atque.....profiteri*, is against him.

Line 3. *Marcum et Commodum rescripsisse.* Reference to *Digest* xlviii. 5, *l.* 38, § 8, shows that the Rescript refers to an adulteress, unless we read in that passage *uxoris in adulterio deprehensum*, instead of *uxorem in adulterio deprehensam*.

Line 5. *Magnus Antoninus, i.e., Caracalla*, to whom are to be ascribed the Rescript, Just. Code, ix. 9, 3, *Imp. Antoninus A. Juliano* (213) and probably *ibid.* 4, now attributed to Alexander—*Imp. Alexander A. Juliano.*

Line 9. *Si iure extranei accusat, i.e.*, if it is the father or husband who brings the charge, but not *iure mariti uel patris.*

Line 10. *Sed tum, post duos, menses intra quattuor menses.* A charge of adultery may be brought by the father or husband, without risk of an action for malicious prosecution, within two months of the alleged act of adultery. Others cannot bring such a charge within this time (*Digest* xlviii. 5, *l.* 14, § 2.). After two months and within four months, all can bring such a charge, but only *iure extranei.* On failure to prove, they are liable to an action for malicious prosecution (*Digest, h.t. l.* 14, § 3, and *l.* 30, *pr.*). After four months, no charge of adultery could, it seems, be brought. Cp. also *Digest, h.t. l.* 11, § 6, and Code 9, *l.* 6.

Line 11. *Ut libertinus.* The freedman generally could not sue his patron, nor could he sue anyone else *extranei iure* on a charge of adultery. But if he is an aggrieved father or husband, he may even sue his patron on a charge of adultery, but only *extranei iure* (*Digest, h.t. l.* 38, § 9).

Line 12. *Minor uiginti quinque annorum.* Cp. *Digest, h.t. l.* 15, § 6

He is bound, however, to lay an information before the authority which has jurisdiction in the place where he has slain the adulterer, and must put away his wife. Unless he do so, the killing will not go unpunished.

But it should be noted that, according to a Rescript of the late Emperors Marcus and Commodus, the unlawful killing of an adulterer should be visited with a milder penalty. Antoninus the Great, too, pardoned those who, in the first outburst of passion, slew adulterers, etc.

The same Paulus, in the same Single Book and Title:

Anyone who brings a charge of adultery, in his paternal or marital capacity, is not liable for malicious prosecution, should he fail to prove. But if he lays such a charge, as an ordinary member of the public, and fails to prove, he is liable for malicious prosecution. In the latter case, too, the charge must be brought after two and within four months of the law-term; even where the accusers are such persons as freedmen, minors under twenty-five years of age, or people branded with infamy, who in other cases may not bring accusations, and are nevertheless permitted to bring a charge of adultery, as Papinian has also written in the Fifteenth Book.

Papinian, in the Fifteenth Book of his Responses, under the Title "Of the Lex Julia Concerning Adulteries."

A Roman citizen who, without wedlock, cohabits with a Roman female citizen, or lives in matrimonial relations with a foreigner, cannot, in a marital capacity, charge her with adultery. But if he seeks legal redress for the wrong done him, he will not be repelled by the plea that he is a person branded with infamy, or is a freedman whose fortune is below thirty thousand sesterces, or has not a son.

Paulus, in the Single Book and under the Title above quoted:

An action can be brought in a marital capacity against a wife, but not against a betrothed. Severus and Antoninus have also issued a Rescript to this effect.

PAGE 76, line 12. *Infamis, i.e.*, anyone who had been condemned on a charge involving character, *e.g.* theft, robbery, *iniuria*, or fraud; a partner, *mandatarius, depositarius*, tutor, mortgagee (in *contractus fiduciae* only), if condemned for wilful breach of duty (*Digest* iii., 2, *l.* 1); bawds, mimes (*Digest* xlviii., 5, *l.* 24, *pr.*).

Lines 12-13. *Tamen ad accusationem admittitur.* The ground is that a man, otherwise incapacitated from bringing a charge, may seek legal redress for a wrong done to him (*Digest* xlviii. 2, *l.* 11, *pr.*). Cp. also the last sentence of chap. 5, in this title *sed ei non opponetur infamia.....propriam iniuriam persequenti.....*

Line 18. *Sed ei non opponetur*, etc., *i.e.*, he can sue *iure extranei*.

IV. 7, 1 Papinianus libro singulari de adulteris:

Quaerebatur, an pater emancipatam filiam iure patris accusare possit. respondi: occidendi quidem facultatem lex tribuit eam filiam, quam habet in potestatem, aut [quae] eo auctore in manum conuenit: sed accusare iure patris ne quidem emancipatam filiam pater prohibetur.

IV. 8, 1 Papinianus eodem libro singulari (et titulo):

Cum patri lex regia dederit in filium uitae necisque potestatem, quo bonum fuit lege conprehendi, ut potestas fieret etiam filiam occidendi, uelis mihi rescribere: nam scire cupio. respondit: numquid ex contrario praestat nobis argumentum haec adiectio, ut non uideatur lex non habenti dedisse, [sed occidi eam cum adultero iussisse], ut uideatur maiore aequitate ductus adulterum occidisse, cum nec filiae pepercerit?

IV. 9, 1 Idem:

Si pater quis adulterum occidit et filiae suae pepercit, quaero quid aduersus eum sit statuendum? respondit: sine dubio iste pater homicida est: igitur tenebitur lege Cornelia de sicariis. plane si filia non uoluntate patris, sed casu seruata est, non minimam habebit defensionem pater, quod forte fugit filia. nam lex ita punit homicidam, si dolo malo homicidium factum fuerit, hic autem pater non ideo seruauit filiam, quia uoluit, sed quia occidere eam non potuit.

IV, 10, 1 Idem:

Si maritus uxorem suam in adulterio deprehensam occidit, an in legem de sicariis incidat, quaero. respondit: nulla parte legis marito uxorem occidere conceditur: quare aperte contra legem fecisse eum non ambigitur. sed si de poena tractas, non inique aliquid eius honestissimo calori permittitur, ut non quasi homicida puniatur capite uel deportatione, sed usque ad exilium poena eius statuatur.

Line 9. *Quo bonum* with Huschke; Mommsen reads *quod bonum*, which is awkward.

Lines 12-13. [*Sed occidi eam cum adultero iussisse*]; instead of this Huschke supplies (*occidendi potestatem, sed necessitatem imposuisse*).

Line 19. *Plane si filia non uoluntate patris.....quod forte fugit filia.* Cp. *Digest* xlviii., 5, *l.* 23, § 4.

Line 27. *Aperte.* Huschke would justify the reading in the Berlin MS. which he takes to be *ea parte* (and not *a parte*) as a reference to that part of the *Lex de Sicariis*, where lawful and unlawful homicide is discussed in contrast to that part of the *Lex* which deals with penalties.

Lines 30-31. *Sed usque ad exilium poena eius statuatur.* Cp. below in this title, chap. 12, § 4, *lenius puniri placuit*; also *Digest* xlviii. 8, *l.* 1, § 5; *ibid.*, xxix. 5, *l.* 3, § 3.

Papinian, in his Single Book "On Adulteries":

The question was asked, whether a father could, in his paternal capacity, bring a charge of adultery against his emancipated daughter. I answered: The law gives him, indeed, the right of killing the daughter whom he has in his power, or who, with his consent, has passed into marital control. But he is not forbidden to bring, in his paternal capacity, an action for adultery against his daughter, even if she is emancipated.

Papinian, in the same Single Book and Title:

As a law of the Regal period had already invested the father with power of life and death over his daughter, what was the purpose of expressly stating in the Statute that he also had the right of killing the daughter? Will you please reply, as I wish to know. He answered: Does not this addition, on the contrary, afford us a proof that the Statute is not to be regarded as conferring a new power (upon the father), but that it actually imposes upon him the duty of killing her, together with the adulterer, so that, in killing the adulterer, he is seen to have been influenced by motives of higher justice, since he has not even spared his daughter.

The same author:

If a father has slain the adulterer and spared his daughter, what, I ask, is his legal position? He answered: That father is undoubtedly a homicide and therefore liable under the "Lex Cornelia Concerning Assassins." Obviously, if the daughter escaped death, not by her father's wish, but by chance, as, for instance, if she fled, the father will have a good defence. For the law only punishes a manslayer, when he has caused death with evil intent. The father, however, did not in this case spare his daughter's life because he wished to do so, but because he was unable to kill her.

The same author:

If the husband kills his wife taken in adultery, does his case fall under the Statute concerning Assassins? He answered: Nowhere in that Statute, is the right granted to the husband to kill the wife. Hence, there is no doubt that the husband has manifestly committed a breach of the law. But if you are discussing the punishment, it is not unfair that allowance should be made for his righteous indignation, and he ought not to be punished as a murderer, with death or deportation, but his sentence should be limited to exile.

IV. 11, 1 Idem sic: De mancipiis alterutrius marito uel patre accusante quaestionem habendam palam est: an idem extraneo accusatori permitti debeat, quaero. respondit: potest uideri ea ratio fuisse permittendi istis personis de seruis quaestionem habere, ut diligentius dolorem animi sui, item iniuriam laesae domus non translaticie persequerentur. sed quoniam non facile tale delictum sine ministerio seruorum admitti creditum est, ratio eo perduxit, ut etiam extraneo accusante mancipia quaestioni tormentorum subicerentur a iudicibus.

IV. 12, 1 Paulus libro sententiarum [secundo] sub titulo de adulteris:

Permittitur [patri] tam adoptiuo quam naturali, adulterum cum filia cuiusque dignitatis domi suae uel generi sui deprehensum
2 sua manu occidere. filius familias pater si filiam in adulterio deprehenderit, uerbis quidem legis prope est, ut non possit
3 occidere: permittitur tamen etiam ei, ut occidat. maritus in adulterio deprehensos non alios quam infames et eos qui corpore quaestum faciunt, seruos etiam et libertos excepta uxore, quam
4 prohibetur, occidere potest. maritum, qui uxorem deprehensam cum adultero occidit, quia hoc inpatientia iusti doloris admisit,
5 lenius puniri placuit. occiso adultero dimittere statim maritus debet uxorem atque ita triduo proximo profiteri, cum quo adultero
6 et in quo loco uxorem deprehenderit. inuenta in adulterio uxore maritus ita demum adulterum occidere potest, si eum domi suae
7 deprehendat. eum, qui in adulterio deprehensam uxorem non
8 statim dimiserit, reum lenocinii postulari placuit. serui uero tam mariti quam uxoris in causa adulteri torqueri possunt, nec his libertas sub specie impunitatis data ualebit.

c. 12, 1, 2, 3 = ***Paulus*** ii. 26, 1, 2, 4 (***ex Codd. Vesontino et Vaticano***).
c. 12, 4, 5 = ***Paulus*** ii. 26, 5, 6 (***ex codd. Vesontinc et Vaticano***).
c. 12, 6, 7 = ***Paulus*** ii. 26, 7, 8.
c. 12, 8. ***Paulus*** ii. 26, 9 ***is restored from this passage.***

Line 1. ***De mancipiis alterutrius.*** Cp. ***Digest*** xlviii. 5, *l.* 27, §§ 6 and 15.

Lines 4-5. ***Ut diligentius dolorem animi sui, item iniuriam lacsae domus.*** The former clause refers to the wronged husband, the latter to the injured father. The object was to prevent the injured parties from precipitately taking the law into their own hands.

Lines 6-9. ***Sed quoniam...a iudicibus.*** From the trend of the argument, it might be presumed that the stranger here means a husband or father, unable to sue in either of those capacities on account of the lapse of more than two months from the commission of the alleged offence; but ***Digest*** xlviii. 18, *l.* 17, *pr.* is quite general in its terms.

Line 16. ***Infames***, see note on page 76, line 12.

Lines 16-17. ***Qui corpore quaestum faciunt.*** According to Huschke, public performers, such as paid gladiators or those who hire themselves out to fight in the arena with wild beasts. Cp. in this title, chap. 3, § 2, ***eum qui auctoramento rogatus est ad gladium***, etc. According to Forcellini, the phrase ***qui corpore quaestum faciunt*** is to be taken ***sensu obsceno***. ***Seruos etiam et libertos***, Huschke has ***seruos etiam et (libertos tam uxoris et suos quam parentium ac) liberorum***.

Line 17. ***Excepta uxore.*** The ***uxor libertina*** is here referred to.

Line 20. ***lenius puniri.*** See page 78, lines 28-31.

Lines 21-22. ***Profiteri.....deprehenderit.*** So, more summarily, above in this title, chap. 3, § 5, ***debet autem profiteri***, etc.

The same author thus:

"It is common knowledge that when a father or husband brings a charge of adultery, slaves belonging to either of the accused parties may be put to the torture. But ought this to be allowed," I ask, "when the accuser is a stranger? He replied: We may well take it that the reason for allowing the first-mentioned to have slaves put to the torture was, that they might the more diligently and without remissness seek legal redress for their outraged feelings and the wrong done to the family honour. But since such an offence could not, it was believed, have been easily committed without the aid of the slaves, it logically followed that even where the accuser was a stranger, slaves might be put by the judges to the torture.

Paulus, in the Second Book of The Sentences, under the Title "Of Adulteries":

An adoptive or a natural father is permitted to kill with his own hand the adulterer taken with his daughter in his house or in that of his son-in-law, whatever be the adulterer's rank.

The strict terms of the law would imply that a father who is a *filius familias* has not the right to kill his daughter taken in adultery. Still he, too, is permitted to do so.

The husband has the right to kill the adulterer taken in the act only when he belongs to one of the following classes: Persons branded with infamy, public performers, slaves and freedmen. The wife is excepted by an express prohibition.

Where a husband kills his wife whom he has taken in adultery, the accepted rule is that he should be punished lightly, because he acted under the over-mastering influence of a just indignation.

When he has killed the adulterer, the husband must at once put away his wife and then lay an information within three days as to the person with whom, and the place where, she was taken in adultery.

Where the wife is taken in adultery, the husband may only kill the adulterer if he apprehends him in his own house.

It is accepted that a husband who does not at once put away his wife whom he took in adultery, may be charged with bawdry.

In trials for adultery, slaves of the husband or wife may be put to the torture; enfranchisement granted them with the view of securing exemption will not avail.

Page 80, lines 24-25. *Eum;.....placuit.* Cp. *Digest* xlviii. 5, *l.* 29, *pr.*
Line 26. *Mariti.* Cp. *Digest*, *h.t. l.* 27, § 14.
Lines 26-27. *Nec his libertas.....ualebit.* Cp. *Digest* xl. 9, *ll.* 12-14.

(TITVLVS V.)

DE STVPRATORIBVS.

V. 1, 1 Moyses dicit :

Qui manserit cum masculo mansione muliebri, aspernamentum est : ambo moriantur, rei sunt.

V. 2, 1 Paulus libro sententiarum II sub titulo de adulteris :

Qui masculum liberum inuitum stuprauerit, capite punietur. 2 qui uoluntate sua stuprum flagitiumque inpurum patitur, dimidia parte bonorum suorum multatur nec testamentum ei ex maiore parte facere licet.

V. 3, 1 Hoc quidem iuris est : mentem tamen legis Moysis imperatoris Theodosii constitutio ad plenum secuta cognoscitur. (item Theodosianus) :

Impp. Valentinianus Theodosius et Arcadius Auggg. ad Orientium uicarium urbis Romae. Non patimur urbem Romam uirtutum omnium matrem diutius effeminati in uiro pudoris contaminatione foedari et agreste illud a priscis conditoribus robur fracta molliter plebe tenuatum conuicium saeculis uel conditorum inrogare uel principum, Orienti k[arissime] ac iuc[undissime] 2 nobis. laudanda igitur experientia tua omnes, quibus flagiti usus est uirile corpus muliebriter constitutum alieni sexus damnare patientia nihilque discretum habere cum feminis, occupatos, ut flagitii poscit inmanitas, atque omnibus eductos, pudet dicere, uirorum lupanaribus spectante populo flammae uindicibus expiabit, ut uniuersi intellegant sacrosanctum cunctis esse debere hospitium uirilis animae nec sine summo supplicio alienum expetisse sexum a. 390 qui suum turpiter perdidisset. Prop. pr. id. Maias Romae in atrio Mineruae.

c. 2. 1 = *Paulus* ii. 26, 12 (*ex codd. Vesontino et Vaticano*).
c. 2, 2. *Paulus* ii. 26, 13 *is restored from this passage.*
c. 3, 2, *l.* 20, omnes—*l.* 24 expiabit = *cod. Theod.* ix. 7, 6.

Lines 4-5. Lev. xx. 13: If a man also lie with mankind, as he lieth with a woman, both of them have committed an abomination: they shall surely be put to death; their blood shall be upon them.

Note that the Collatio gives the text in a summarised form.

Lines 8-10. *Dimidia parte.....licet.* One half of the property of which he is possessed at the time of conviction is forfeited to the State and of whatever he possesses at the time of death the State takes a half. Severus was the author of this constitution. (*Zosimus*, 1, 8.)

Line 11. *Hoc quidem iuris est*, i.e., as interpreted by the jurists.

Lines 12-13. *Item Theodosianus ;* this, according to the view of editors and critics, is an interpolation. Cp. Haenel, Theodosian Code, p. 846.

Line 20. *Experientia tua:* a title of honour. Cp. Th. C. xvi. 5, chap. 28, *de haeret. ideoque experientia tua ; ibid.* viii. 5, '57, *ne experientiae tuae*, a title used as a synonym to *laudabilitas tua* in the same paragraph.

FIFTH TITLE.

"OF DEBAUCHERS."

Moses says:

If anyone hath intercourse with a male as with a woman, it is an abomination. Let them both die; they are guilty.

Paulus, in the Second Book of "The Sentences," under the Title "Of Adulteries."

He who debauches a free male against his will shall suffer capital punishment.

Whoever willingly suffers himself to be debauched, forfeits half his property, and is not permitted to make testamentary disposition of more than half of the remainder.

This indeed is the law. But a constitution of the Emperor Theodosius followed to the full the spirit of the Mosaic Law. (Likewise the Theodosian Code.)

The Emperors Valentinian, Theodosius and Arcadius to Orientius, Vicar of the City of Rome: We cannot, dear and well-beloved Orientius, permit the City of Rome, mother of all the virtues, to be defiled any longer by the pollution of Sodomite practices, and the sturdy manhood derived from our ancient founders to be enfeebled, and thus, with the nation enervated by debauchery, a reproach be cast upon the ages of the Founders and the present Imperial time. All, therefore, whose wicked practice it is to treat the male body as if it were that of a female and condemn it to the functions of the opposite sex, holding themselves in no wise different from women—these, as the monstrous character of their crime demands, shall, under the instruction of Your Excellency, be arrested and dragged forth from the male brothels—shame to mention them—and, in the sight of the people be purged of their crime in the avenging flames; and so all will learn that the tabernacle of the soul of man is to be regarded by every one as sacred and inviolate, and no one who has shamefully forfeited his own sex shall seek to play the part of the other sex without suffering the extreme penalty of the law. Issued the 14th of May in the Hall of Minerva.

Page 82, line 20. *Flagiti usus;* Huschke has *flagitiosus luxus:* whose wicked sensuality induces them, etc.

Line 22. *occupatos = manu militari captos.* Huschke omits the comma after *feminis*, and explains *occupatos* to mean "those who are engaged in sodomy" for profit

Lines 27-28. *prop .....mineruae.* The date and place are given differently in Th. C.

(TITVLVS VI.)

DE INCESTIS NVPTIIS.

VI. 1, 1 Moyses dicit:

Quicumque concubuerit cum muliere uxore patris sui, pu-
2 denda patris sui detexit, mortem moriantur ambo: rei sunt. et
quicumque concubuerit cum nuru sua, mortem moriantur ambo:
rei sunt.

VI. 2, 1 Ulpianus libro regularum singulari sub titulo de nuptiis:

Inter parentes et liberos, cuiuscumque gradus sint, conubium
2 non est. inter cognatos autem ex transuerso gradu olim quidem
usque ad quartum gradum matrimonia contrahi non poterant:
nunc autem ex tertio gradu licet uxorem ducere, sed tantum
fratris filiam, non etiam sororis, nec amitam nec materteram,
3 quamuis eodem gradu sint. eam quae nouerca uel priuigna, uel
4 quae nurus uel socrus fuit, uxorem ducere non possumus. si
quis eam quam non licet uxorem duxerit, incestum matrimonium
contrahit: ideoque liberi in potestate eius non fiunt, sed quasi
uulgo concepti spurii sunt.

VI. 3, 1 Paulus libro sententiarum [secundo] sub titulo de nuptiis:

Inter parentes et liberos, matrimonia contrahi non possunt;
iure ciuili [nec sororem] nec filiam sororis aut neptem uxorem
2 ducere possumus: proneptem aetatis ratio prohibet. adoptiua
cognatio impedit nuptias inter parentes ac liberos omnimodo, inter
fratres (ac sorores) eatenus, quatenus capitis minutio non
3 interuenit. nec socrum nec nurum [nec] priuignam nec
nouercam aliquando citra poenam incesti uxorem ducere licet,
sicut nec amitam aut materteram. sed qui [affinem] uel
cognatam contra interdictum duxerit, remisso mulieri iuris errore
ipse poenam adulterii lege Iulia patitur, non etiam ducta.

c. 2 = *Ulpianus Reg.* v. 6, 7.

Lines 4-7. Lev. xx. 11, 12: And the man that lieth with his father's wife hath uncovered his father's nakedness: both of them shall surely be put to death; their blood shall be upon them.

And if a man lie with his daughter-in-law, both of them shall surely be put to death: they have wrought confusion; their blood shall be upon them.

Note that the Collatio gives the Scriptural texts in summarised form.

Lines 20-21. *Non possunt; iure ciuili (nec sororem).* I have adopted this order of words from Huschke. Mommsen has *iure ciuili* in line 20 after *liberos*. This cannot be correct, for marriage between ascendants and descendants are unlawful, *iure gentium*. See above in this title, chap. 2, § 1; also Gaius i. 59; *Digest* xxiii. 2, *l.* 53, and explicitly *ibid. l.* 68, *iure gentium incestum committit qui ex gradu ascendentium uel descendentium uxorem duxerit.* But a sister's daughter or a granddaughter is only prohibited *ciuili iure* (*Digest* xlviii. 5, *l.* 38, §§ 1 and 2). By Jewish Law marriage with a niece is permitted and even commended.

Line 24. (*ac sorores*), adopted from Gaius i. 61.

Line 27. (*affinem*), adopted from Huschke.

Lines 27-29. *sed qui.....ducta.* Cp. *Digest* xlviii. 5, *l.* 11, § 1, and *l.* 38, §§ 2, 4, 7.

SIXTH TITLE.

"OF INCESTUOUS MARRIAGES."

Moses says:

Whoever lieth with a woman, his father's wife, hath uncovered his father's nakedness. Both shall surely die; they are guilty.

And whoever lieth with his daughter-in-law—both shall surely die; they are guilty.

Ulpian, in his Single Book of Rules, under the Title "Of Marriages":

There can be no lawful wedlock between ascendants and descendants, whatever the degree.

At one time, marriages could not take place between cognates laterally related up to the fourth degree. Now, however, a man is allowed to marry a relative of the third degree, but only a brother's daughter; not, however, a sister's daughter, a father's sister, or a mother's sister, though these are also related to him in the same degree.

A man cannot marry a woman who has been his stepmother, stepdaughter, daughter-in-law, or mother-in-law.

Marriage with a woman whom it is unlawful to take to wife is incestuous, and the children accordingly do not come in the father's power, but are illegitimate, as though they had been conceived in promiscuous intercourse.

Paulus, in the Second Book of "The Sentences," under the Title "Of Marriages":

No marriages can be contracted between ascendants and descendants. Nor can we, according to the law of Rome, marry a sister, a sister's daughter or granddaughter. The consideration of age is a bar to marriage with her great-granddaughter.

Adoptive relationship is, under all circumstances, an impediment to marriages between ascendants and descendants; but between brothers [and sisters] only so long as there has been no change of status.

Furthermore, marriage can never take place with a mother-in-law, daughter-in-law, stepdaughter, or stepmother, nor with a father's or mother's sister, without subjecting the parties to the penalties for incest. But if a man has, contrary to the prohibition, married one related to him by blood, he suffers the penalty for adultery under the Lex Julia, but not so the woman whom he married, since a woman is pardoned a mistake caused by ignorance of the law.

VI. 4, 1 Gregorianus libro quinto sub titulo de nuptiis. Exemplum litterarum Diocletiani et Maximiani impp. talem coniunctionem grauiter punire commemorat:

Exemplum edicti Diocletiani et Maximiani [Augg. et Constantii et Maximiani] nobilissimorum Caesarum. Quoniam piis religiosisque mentibus nostris ea, quae Romanis legibus caste sancteque sunt constituta, uenerabilia maxime uidentur atque aeterna religione seruanda, dissimulare ea, quae a quibusdam in praeteritum nefarie incesteque commissa sunt, non oportere credimus: cum uel cohibenda sunt uel etiam uindicanda, insurgere nos disciplina nostrorum temporum cohortatur. ita enim et ipsos inmortales deos Romano nomini, ut semper fuerunt, fauentes atque placatos futuros esse non dubium est, si cunctos sub imperio nostro agentes piam religiosamque et quietam et
2 castam in omnibus mere colere perspexerimus uitam. in quo id etiam prouidendum quam maxime esse censuimus, ut matrimoniis religiose atque legitime iuxta disciplinam iuris ueteris copulatis tam eorum honestati, qui nuptiarum coniunctionem sectantur, quam etiam his, qui indè deinceps nascentur, seruata religione incipiat esse consultum et honestate nascendi etiam posteritas ipsa purgata sit. id enim pietati nostrae maxime placuit, ut sancta necessitudinum nomina optineant apud affectus suos piam ac religiosam consanguinitati debitam caritatem. nefas enim credere est [duratura] ea, quae in praeteritum a conpluribus constat esse commissa, cum pecudum ac ferarum promiscuo ritu ad inlicita conubia instinctu execrandae libidinis sine ullo respectu
3 pudoris ac pietatis inruerint. sed quaecumque antehac uel inperitia delinquentium uel pro ignorantia iuris barbaricae inmanitatis ritu ex inlicitis matrimoniis uidentur admissa, quamquam essent seuerissime uindicanda, tamen contemplatione clementiae nostrae ad indulgentiam uolumus pertinere, ita tamen, ut quicumque in ante actum tempus inlicitis incestisque se matrimoniis polluerunt, hactenus adeptos se esse nostram indulgentiam sciant, ut post tam nefaria facinora uitam quidem

Line 22. affectus = near and dear relation, in this passage children. Cp. Th. C. xii. 1, 26: *denique ex perfectissimis honorariis uel affectus eorum.*

Line 24. *duratura;* I have supplied this word before *ea*, on Mommsen's suggestion. Huschke reads (*atenim*) *nefas eam çreare est ea*, (*eam sc. caritatem*, Cp. *Beier ad Cic. De offic.* ii., p. 238): "it would be wrong that such tender feelings should be produced by the conditions that existed in the past."

Line 28. *inperitia*. Huschke cannot see any distinction between *inperitia* and *ignorantia iuris*; he, therefore, suggests instead of *inperitia, impuritia;* the meaning would be, whether these illicit unions were due to libidinousness or to ignorance of the Law.

The Gregorian Code, in the Fifth Book, under the Title "Of Marriages":

The text of a letter by the Emperors Diocletian and Maximian states that such a union should be visited with severe punishment.

Text of the Edict of the illustrious [and august] Emperors Diocletian and Maximian [Constantius and Maximian]: Since to our deep sense of religion the principles of pure morality established by Roman laws are deemed especially worthy of reverence and of scrupulous observance at all times, we regard it as our duty not to ignore the abominable acts of incest that have been committed in the past by certain persons. The spirit of our times calls upon us to take strong measures against all such practices as are to be checked or even punished. The immortal Gods, on their part, will undoubtedly continue to be, as they have always been, favourable and friendly to the Roman Power, only if all who live under our rule shall be observed by us to lead pious and religious lives, and to observe in all things quiet and absolute purity.

We have herein resolved that we must also as far as possible ensure two things in the case of marriages contracted under the auspices of religion and law according to our ancient legal system: (1) We must, by observing the requirements of religion, safeguard the good repute of those who seek the nuptial bond, and also of their issue; and (2) we must see that their descendants, by the purity of their birth, are also free from taint. For, in accord with our sense of piety, we made it a special point that the holy terms of relationship should command among the near relatives an affection which is due by our holy religion to kinship. It would indeed be wrong to anticipate a continuance of those acts which in the past had notoriously been committed by many persons who, impelled by their execrable lust, and without regard for decency and religion, rushed blindly into lawless unions after the promiscuous manner of cattle and wild beasts. But as regards all such unions as have hitherto been contracted after the monstrous fashion of barbarians, whether through inexperience or in ignorance of the law, our will is that, despite the severe punishment they merit, they should, of our clemency, have pardon extended to them. The grant of this indulgence, however, to all those who have defiled themselves in the past by lawless and incestuous connections, is to be regarded by the offenders as a boon, since after such abominable misdeeds

sibi gratulentur esse concessam, sciant tamen non legitimos se suscepisse liberos, quos tam nefaria coniunctione genuerunt. ita enim fiet, ut de futuro quoque nemo audeat infrenatis cupiditatibus oboedire, cum et sciant ita praecedentes admissores istius modi criminum uenia liberatos, ut liberorum quos inlicite genuerunt successione arceantur, quae iuxta uetustatem Romanis legibus negabatur.

Et optassemus quidem nec ante quicquam eius modi esse commissum, quod esset aut clementia remittendum aut
VI. 4, 4 legibus corrigendum. sed posthac religionem sanctitatemque in conubiis copulandis uolumus ab unoquoque seruari, ut se ad disciplinam legesque Romanas meminerint pertinere et eas tantum
5 sciant nuptias licitas, quae sunt Romano iure permissae. cum quibus autem personis tam cognatorum quam ex adfinium numero contrahi non liceat matrimonium, hoc edicto nostro conplexi sumus: cum filia nepte pronepte itemque matre auia proauia et ex latere amita ac matertera [sorore] sororis filia et ex ea nepte. itemque ex adfinibus priuigna nouerca socru nuru ceterisque quae antiquo iure prohibentur, a quibus cunctos uolumus abstinere.
6 Nihil enim nisi sanctum ac uenerabile nostra iura custodiunt et ita ad tantam magnitudinem Romana maiestas cunctorum numinum fauore peruenit, quoniam omnes leges suas religione sapienti
7 pudorisque obseruatione deuinxit. quare hoc edicto nostro uolumus omnibus palam fieri, quod praeteritorum uenia, quae per clementiam nostram contra disciplinam uidetur indulta, ad ea tantum delicta pertineat, quae in diem III kal. Ian. Tusco et
8 Anullino cons. uidentur esse commissa. si qua autem contra Romani nominis decus sanctitatemque legum post supra dictum diem deprehendentur admissa, digna seueritate plectentur. nec enim ullam in tam nefario scelere quisquam aestimet ueniam se consequi posse, qui tam euidenti crimini et post edictum nostrum
a. 295 non dubitabit inruere. Dat. kal. Mai. Damasco Tusco et Anullino cons.

c. 4, 5 = *Cod. Ius.* v. 4, 17, *with a different beginning*: Nemini liceat contrahere matrimonium cum filia — abstinere.

Line 31. *Tam euidenti crimini*: Huschke suggests *in iam euidens crimen*.

Line 32. *Kal. Mai.* On the strength of the reading *Maias* in the Berlin MS., Huschke thinks that the number of days has fallen out before *Maias*.

their lives have been spared as an act of grace; they must know, however, that the children begotten of such wicked unions are not legitimate. The result will then be that in the future no one will dare to yield to his unbridled lusts, since they will be aware that those who before them had committed crimes of this character, though saved by the royal pardon from punishment, were nevertheless denied the right of being succeeded by their children whom they had begotten in illicit union, a right which, according to the ancient system, was denied them by the Roman laws. We could have wished that no such act had been committed, to need the exercise of our clemency or the correction of the law. And it is our will that henceforth, in contracting marriages, the requirements of religion and morality shall be observed by all, and all shall remember that they live under the Roman laws and institutions, and know that only such marriages are lawful as are sanctioned by the Roman law.

In this our Edict, we have enumerated the relatives, whether of the blood or by affinity, with whom marriage is prohibited, namely, a daughter, granddaughter, great-granddaughter, likewise a mother, grandmother, great-grandmother; and laterally, a father's sister, mother's sister [one's own sister], sister's daughter, or granddaughter. Among relatives by marriage, a mother-in-law, stepmother, stepdaughter, daughter-in-law, and relatives of other degrees with whom marriage is prohibited by ancient law; marriages within such degrees we forbid to all.

For our laws contain nothing but what is hallowed and worthy of reverence, and the Roman Empire has, under divine favour, attained its present greatness, only because it has safeguarded all its laws with the wise sanctions of religion and concern for morality.

Wherefore by this our Edict be it known to all that the pardon vouchsafed of Our grace for past offences, though seemingly against the spirit of our institutions, covers such offences only as appear to have been committed up to the 30th of December in the Consulship of Tuscus and Anullinus.

All offences against the honour of the Roman name and sanctity of the laws, found to have been committed after the above-named date, will be punished with condign severity. And if any person, after the publication of our Edict, shall not hesitate to rush into the commission of what is so clearly criminal, let him not count upon obtaining pardon for his heinous offence. Issued May 1st at Damascus in the Consulship of Tuscus and Anullinus.

VI. 5, 1 Hermogenianus sub titulo de nuptis:

Impp. Diocletianus et Maximianus Augg. Fl. Flauiano. His qui incestas nuptias per errorem contrahunt, ne poenis subiciantur, ita demum clementia principum subuenit, si postea quam errorem suum rescierint, ilico nefarias nuptias diremerint.

a. 291 Prop. id. Mart. [Tiberiano] et Dione cons.

VI. 6, 1 Hanc quoque constitutionem Gregorianus titulo de nuptiis inseruit, quae est tricesima et secunda, aliis tamen et die [et cons.], id est: constitutio prop. V id. Iun. Diocletiano

a. 287 ter et Maximiano Augustis.

Papinianus libro singulari de adulteris:

Qui sororis filiam uxorem duxerat per errorem, antequam praeueniretur a delatore, diremit coitum: quaero an adhuc possit accusari? respondit: ei qui coitu sororis filiae bona fide abstinuit, poenam remitti palam est, quia qui errore cognito diremit coitum, creditur eius uoluntatis fuisse, ut, si scisset se in eo necessitudinis gradu positum, non fuisset tale matrimonium copulaturus.

VI. 7, 1 Idem dicitur in eos, qui incestas nuptias contraxerunt. maledicti tamen sunt omnes incesti per legem, cum adhuc rudibus populis ex diuino nutu condita isdem adstipulantibus sanciretur. et utique omnes maledicti puniti sunt, quos diuina et humana sententia consona uoce damnauit. lex diuina sic dicit:

Maledictus, inquit, dixit Moyses, qui concubuerit cum uxore

2 patris sui: et dicit omnis populus: fiat, fiat. maledictus, qui

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Lines 2-6. *Impp.....Cons:* Haenel gives this Constitution in his edition of the Gregorian Code only, p. 30. Cp., for the law, *Digest* xlviii. 5, *l.* 38, § 7.

Lines 7-10. *Hanc.....Augustis:* this paragraph is regarded by all critics, except Dirksen, as an interpolation.

Lines 12-17. *Qui.....copulaturus.* Cp. *Digest* xlviii. 5, *l.* 38, §§ 5 and 6.

Line 14. *coitu:* Huschke adopts the reading of the MSS., *coniunctae.* But the text can stand, as *diremit coitum* occurs in the line below.

Line 18. *Idem.* The same condemnation is pronounced on incestuous unions in the Mosaic as in the Roman Laws.

Line 19. *Omnes incesti, i.e.*, not only the two cases of incest referred to in the Scriptural text at the head of the title, but all those that follow.

Line 22. *Puniti sunt.* The offences were not left to the condemnation of heaven, but were punished by human tribunals.

Line 24, till p. 92, *l.* 11. *Maledictus.....fiat*, Deut. xxvii. 20, 22, 23: "Cursed be he that lieth with his father's wife: because he uncovereth his father's skirt. And all the people shall say, Amen.

Cursed be he that lieth with his sister, the daughter of his father, or the daughter of his mother. And all the people shall say, Amen.

Cursed be he that lieth with his mother-in-law. And all the people shall say, Amen.

Lev. xviii. 12: Thou shalt not uncover the nakedness of thy father's sister: she is thy father's near kinswoman.

Ibid. xviii. 13. Thou shalt not uncover the nakedness of thy mother's sister: she is

The Hermogenian Code, under the title "Of Marriages."

The Emperors Diocletian and Maximian to Flavius Flavianus: The clemency of the Emperors gives relief from penalties for incestuous marriages contracted in error, only if the parties, immediately upon discovery of the error, have broken off their unlawful union. Issued 15th of March, in the Consulship of [Tiberianus] and Dio.

This constitution has likewise been inserted in the Gregorian Code, under the title "Of Marriages," which is the thirty-second title, but with another date and names of other consuls:—namely, Constitution issued 9th of June, in the Consulship of the Emperors Diocletian (third year) and Maximian.

Papinian, in his Single Book "Of Adulteries":

If a man married his sister's daughter in error, and put an end to the union before he had been denounced by the informer, can a charge, I ask, be still brought against him. He answered: Where a man separates in good faith from his sister's daughter, the penalty is obviously remitted; because if one, on discovery of his error breaks off the union, it is presumed that had he known that he stood within the [forbidden] degree of relationship, he would not have contracted such a marriage.

The same is said against those who have entered into incestuous marriages. All guilty of incest were moreover cursed by the Law, when it was promulgated by Divine Authority to a people as yet uncultivated, and was then confirmed by a covenant into which they entered. And certainly all those upon whom a curse was pronounced, and whom Divine and human judgment with one voice condemned, received punishment. Thus saith the Divine Law:

Cursed, saith (God), Moses declared, be he who lieth with his father's wife; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his sister, either on his father's or mother's side; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his daughter-in-law; and all the people saith, "So be it, so be it."

concubuerit cum sorore sua de patre aut de matre: et dicit omnis
3 populus: fiat, fiat. maledictus, qui concubuerit cum nuru sua: et
4 dicit omnis populus: fiat, fiat. Maledictus, qui concuberit cum
5 socru sua: et dicit omnis populus: fiat, fiat. maledictus, qui
concubuerit cum sorore patris sui: et dicit omnis populus: fiat,
6 fiat. maledictus, qui concubuerit cum sorore matris suae: et
7 dicit omnis populus: fiat, fiat. maledictus, qui concubuerit cum
8 sorore uxoris suae: et dicit omnis populus, fiat, fiat. maledictus,
qui dormierit cum uxore fratris sui: et dicit omnis populus: fiat,
9 fiat. maledictus, qui dormierit cum omni pecore: et dicit omnis
populus: fiat, fiat.

(TITVLVS VII.)

DE FVRIBVS ET DE POENA EORVM.

VII. 1, 1 Quod si duodecim tabularum nocturnum furem [quoquo modo, diurnum] autem si se audeat telo defendere, interfici iubent, scitote, iuris consulti, quia Moyses prius hoc statuit, sicut lectio manifestat. Moyses dicit:

Si perfodiens nocte parietem inuentus fuerit fur et percusserit eum alius et mortuus fuerit hic, non est homicida is qui per-
2 cusserit eum. si autem sol ortus fuerit super eum, reus est mortis percussor: et ipse morietur.

VII. 2, 1 Paulus libro sententiarum V ad legem Corneliam de sicaris et ueneficis:

Si quis furem nocturnum uel diurnum cum se telo defenderet occiderit, hac quidem lege non tenetur, sed melius fecerit, qui eum conprehensum transmittendum ad praesidem magistratibus optulerit.

VII. 3, 1 Ulpianus libro XVIII ad edictum sub titulo si quadrupes pauperiem dederit:

Iniuria occisum esse merito adicitur: non enim sufficit

c. 3, 1 *till* factum = *Dig.* ix. 2, 3.

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thy mother's near kinswoman. *Ibid.* xviii. 18: Neither shalt thou take a wife to her sister, to vex her, to uncover her nakedness, beside the other in her lifetime. (Note the last clause. According to Jewish Law marriage with a *deceased* wife's sister was never forbidden). *Ibid.* xviii. 16: Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness.

Deut. xxviii. 21: Cursed be he, that lieth with any manner of beast. And all the people shall say, Amen.

Note that the incests forbidden in the text at the beginning of this title are put under a ban in the texts quoted here (Deut. xxvii. 20 and xxvii. 23, according to the Septuagint μετὰ νύμφης αὐτοῦ). The author has altered the texts in Leviticus and framed them after the fashion of those he quotes from Deuteronomy, to indicate that the same penalties, Divine and human, apply to all incests.

Cursed be he who lieth with his mother-in-law; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his father's sister; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his mother's sister; and all the people saith, "So be it, so be it."

Cursed be he who lieth with his wife's sister; and all the people saith, "So be it, so be it."

Cursed be he who sleepeth with his brother's wife; and all the people saith, "So be it, so be it."

Cursed be he who sleepeth with any beast; and all the people saith, "So be it, so be it."

TITLE VII.

OF THIEVES AND THEIR PUNISHMENT.

With regard to the ordinance of the Twelve Tables that a thief, coming at night, be in any case killed, but if he come by day, only if he venture to defend himself with a weapon, know, ye jurists, that Moses had previously so ordained, as a perusal (of his Law) will show. Moses says:

If a thief be found breaking through the wall by night and one strike him and he die, the one who struck him is not a murderer.

But if the sun has risen on him, the smiter is guilty of his death and shall himself die.

Paulus, in the Fifth Book of The Sentences, on "The *Lex Cornelia* concerning Assassins and Poisoners":

If one kill a thief who comes at night or comes by day and defends himself with a weapon, he is not liable under this law; but he would have done better, had he apprehended and delivered him to the Magistrates, to be sent to the Provincial President for trial.

Ulpian, in the Eighteenth Book of his Commentary on the Edict, under the title "If a four-footed animal has caused damage to property":

The term "wrongfully" in the phrase "killed wrongfully"

Page 92, lines 18-21. Exod. xxii. 2-3: If a thief be found breaking in, and be smitten that he die, there shall no blood be shed for him. If the sun be risen upon him, there shall be blood shed for him.

Line 28. *Libro* xviii.; as correctly given in the *Digest*: the MSS. have *libro* viii.

Lines 28-29. *Si quadrupes pauperiem dederit.* Ulpian wrote in his 18th book on the edict under the title; *Si quadrupes pauperiem dederit* (Cp. *Digest* ix. 1, *l.* 1 But what follows here in the Collatio is what he wrote on the edict concerning the *Lex Aquilia* Cp. ***Digest* ix. 2, *l.* 3; *ibid*, *l.* 5, *pr.* and § 1).**

occisum, sed oportet iniuria id esse factum. proinde si quis seruum latronem occiderit, lege Aquilia non tenetur, quia [iniuria]
2 non occidit. sed et quemcumque alium ferro se petentem qui occiderit, non uidebitur iniuria occidisse. proinde si furem nocturnum, quem lex duodecim tabularum omnimodo permittit occidere, aut diurnum, quem aeque lex permittit, sed ita demum, si se telo defendat, uideamus, an lege Aquilia teneatur. et
3 Pomponius dubitat, num haec lex non sit in usu. et si quis noctu furem occiderit, non dubitamus, quin lege Aquilia [non] teneatur: sin autem, cum posset adprehendere, maluit occidere, magis est, ut iniuria fecisse uideatur: ergo etiam lege Cornelia tenebitur.
4 iniuriam autem accipere hic nos oportet non, quemadmodum et circa iniuriarum actionem, contumeliam quandam, sed quod non iure factum est, hoc est contra ius, id est si culpa quis occiderit. et reliqua.

VII. 4, 1 Ulpianus libro octauo de officio proconsulis sub titulo de furibus:

Fures ad forum remittendi sunt diurni, nocturnique extra ordinem audiendi et causa cognita puniendi, dummodo in poena eorum sciamus operis publici temporari modum non egrediendum.
2 idem et in balneariis furibus. sed si se telo fures defendunt uel effractores uel ceteri his similes nec quemquam percusserunt, metalli poena humiliores, honestiores uero relegatione adficiendi erunt.

VII. 5, 1, 2 Paulus libro sententiarum II sub titulo de furibus:

Furti quocumque genere damnatus famosus efficitur. fur

c. 3, 2 *till* occidisse = *Dig.* ix. 2, 5 *pr.*
c. 3. 3 = *Dig.* ix. 2, 5 *pr.*
c. 3, 4 = *Dig.* ix. 2, 5, 1.
c. 4 = *Dig.* xlvii. 17, 1 *abridged.*
c. 5, 1 = *Paulus* ii. 31, 15.
c. 5, 2-6 = *Paulus* ii. 31, 1—5.

Line 8. *Noctu*; Huschke prefers the reading in the *Digest*, *metu* (*mortis*), which he thinks was the reading originally intended in the Berlin Codex.

Line 11. *Ergo etiam lege Cornelia tenebitur.* If the slayer of the thief could have arrested him, he would be liable, under the *Lex Aquilia*, to the master if the thief was a slave, and also under the *Lex Cornelia* for homicide.

Line 18. *Fures ad forum.* The ordinary tribunal for the trial of civil cases. Cp. *ad forum remittendus est* in title xi., chap. 4, and *ibid*, chap. 6, § 2. Such cases are only heard when the *forum* is sitting and dealing with civil matters. Hence the term, *forenses actiones* (*Digest* xlvii. 9, *l.* 1, § 1).

Line 26. *Furti.....efficitur.* Huschke suggests that this sentence properly belongs to the end of this chapter, and should similarly be added after Paulus ii. 31, 1-5.

Line 26. *Furti.....efficitur.* Cp. *Digest* iii. 2, *l.* 6, pr.

is rightly added, for it is not enough that a death has been caused, but it is necessary (to constitute the offence) that it should have been caused wrongfully. Thus, one who has killed a slave who is a highway robber, is not liable under the *Lex Aquilia*, because he has not killed wrongfully.

So too, the killing of a person who makes an armed attack, will not be deemed wrongful. If, then, a thief coming by night has been killed, as is allowed by the Law of the Twelve Tables in all circumstances, or one coming by day, as is equally allowed by the Law, but only when he offers armed resistance, is the slayer liable under the *Lex Aquilia*? Pomponius is uncertain whether this law does not apply.

In the case of a thief killed at night, we have no doubt that the killer is not liable under the *Lex Aquilia*. But if he choose to kill the thief when he might have arrested him, the better opinion is that it should be regarded as a wrongful act. He will therefore also be liable under the *Lex Cornelia*.

The term "wrongfully" [*iniuria*] here, is not to be taken in the sense of insult, as in the phrase *Iniuriarum Actio* "Action for outrage," but as meaning that which is done unlawfully, that is, against the law; namely, where death has been occasioned through someone else's fault, etc.

Ulpian, in the Eighth Book of the Proconsular Functions, under the title "Of Thieves":

Thieves who have stolen by day are to be sent for trial to the civil tribunal; those who steal at night are tried and punished on conviction, under the Praetor's extraordinary jurisdiction; yet, in punishing them, it must be borne in mind that we must not inflict on them a heavier penalty than a definite term in the public works. The same applies to those who steal at the baths. But thieves who offer armed resistance, break into houses, or are guilty of similar aggravated thefts, even though they have not assaulted anyone, are, if they belong to the lower orders, to be sentenced to the mines; if to the better classes, to deportation.

Paulus, in the Second Book of The Sentences, under the title "Concerning Thieves":

Anyone convicted of any kind of theft, becomes infamous.

A thief is one who handles property belonging to another [with fraudulent intent].

VII. 5, 3 est qui rem alienam contrectat. furtorum genera sunt quattuor, manifesti, nec manifesti, concepti et oblati. manifestus fur est, qui in faciendo deprehensus est, et qui intra terminos eius loci, unde furatus est, conprehensus est, uel antequam ad eum locum, quo destinauerat, peruenerit. nec manifestus est fur, qui in rapiendo quidem conprehensus non est, sed eum fecisse negari 4 non potest. concepti actione tenetur, apud quem furtum est inuentum. oblati actione is tenetur, qui rem furtiuam ali optulit, 5 ne apud se inueniretur. furti actione is agere potest, cuius 6 interest rem non perisse. conceptiua autem agere potest, qui rem concepit et inuenit. oblati agere potest, penes quem res concepta inuenta est.

(TITVLVS VIII.)

DE FALSO TESTIMONIO.

VIII. 1, 1 Moyses dicit:

Si stetérit testis iniustus aduersus hominem accusandum 2 accusans eum impietatis, stabunt duo homines, quibus est inuicem contentio, ante deum et ante sacerdotes et ante iudices, quicumque 3 fuerint in illis diebus. cum inquisierint iudices diligenter et 4 inuentus fuerit testis iniustus testificans iniusta, insurgentes aduersus eum facietis ei, sicut uoluit malefacere et delebitis 5 malum de medio uestrum: et ceteri audientes timebunt nec audebunt haec mala facere inter uos.

2, 1 Paulus libro singulari de poenis omnium legum sub titulo ad legem Iuliam de adulteris:

Qui falsum testimonium dixerit, proinde tenebitur, ac si lege Cornelia testamentaria damnatus esset.

Lines 4-5. *Ad eum locum quo.* Huschke supplies *eo die* after these words, before *destinauerat*. Cp. *Digest* xlvii. 2, *l.* 4. See Gaius iii. 184, where this point is mooted by the jurists.

Line 11. *Et inuenit;* Huschke suggests [*(id) est inuenit*] and regards the whole passage as a gloss. But *concepit* may already, in Paulus' time, have been an archaic term, needing the explanation *et inuenit*.

Line 12. *inuenta est*. The above remark applies to [*(id est) inuenta*], suggested by Pithou and adopted by Huschke.

Lines 16-23. Deut. xix. 16-20: If a false witness rise up against any to testify against him that which is wrong; then both the men, between whom the controversy is, shall stand before the Lord, before the priests and the judges, which shall be in those days; and the judges shall make diligent inquisition: and, behold, if the witness be a false witness, and hath testified falsely against his brother; then shall ye do unto him, as he had thought to have done unto his brother: so shalt thou put the evil away from you. And those which remain shall hear, and fear, and shall henceforth commit no more any such evil among you.

Uoluit malefacere better represents the original Hebrew and the Septuagint than does the Authorised Version. זמם like ἐπονηρεύσατο, means "thought evilly, plotted." It is interesting to note that the Jewish Law, according to the interpretation of the Pharisees, laid stress on *uoluit*, and only punished the witnesses if the falsehood of their testimony had

There are four kinds of theft: manifest, not manifest, receiving stolen goods, and passing them on. A manifest thief is one caught in the act, or apprehended within the bounds of the place wherein he had stolen it, or before his arrival at the place where he had intended to deposit it. A thief guilty of a non-manifest theft is one who was not arrested in the act of stealing, but whose commission of the theft cannot be denied. A man is liable for receiving stolen goods, on whose premises the stolen article has been found. A man is liable for passing stolen property, when he has passed it on to another person, to prevent its being found on his own premises.

Anyone to whose interest it is that a thing shall not cease to exist can sue for it in an action for theft.

The one who seized, [and] found the stolen article is the proper person to sue in an action for receiving. The one on whose premises it was seized [that is, with whom it was found], is the proper person to sue the thief for passing it on to him.

TITLE VIII.

"OF FALSE TESTIMONY."

Moses says:

If a false witness rise up against a man to accuse him of impiety, the two men between whom there is a controversy shall stand before God and before the priests and before the judges who shall be in those days.

When the judges shall have made diligent inquiry and the witness shall have been found unjust, testifying unjust things, ye shall rise against him, and do unto him according to the evil he wished to do, and ye shall blot out evil from your midst.

And the rest of the people shall hear and fear and not dare to do these evil things among you.

Paulus, in his single book concerning penalties imposed by all laws, under the title "On the *Lex Julia* concerning Adulteries":

Whoever has given false testimony will be liable in the same way as if he had been convicted under the *Lex Cornelia Testamentaria.*

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been discovered before sentence on the accused had been carried out. This was in accordance with public policy. If, after a miscarriage of justice had taken place, the false witnesses had been executed on the denunciation of other witnesses, there was no guarantee that the second set of witnesses might not in their turn have their testimony impeached.

PAGE 96, lines 26-27. *qui.....esset, i.e.*, he suffers deportation. . Cp. Paulus iv. 7, § 1; see also *Digest* xlviii. 10, *l.* 33, for interdiction from fire and water, as the penalty for fraudulently quoting a non-existent Constitution.

VIII. 3, 1 Paulus libro sententiarum quinto sub titulo de testibus et de quaestionibus:

Hi, qui falso uel uarie testimonia dixerunt uel utrique parti prodiderunt, aut in exilium aguntur aut in insulam relegantur aut curia submouentur.

VIII. 4, 1 Idem libro [sententiarum quinto sub titulo] ad legem Corneliam de sicaris et ueneficis:

Lex Cornelia poenam deportationis infligit ei qui hominem occiderit eiusque rei causa furtiue faciendi cum telo fuerit, et qui uenenum hominis necandi causa habuerit uendiderit parauerit, falsumue testimonium dixerit quo quis periret, mortisue causam
2 praestiterit. quae omnia facinora in honestiores poena capitis uindicari placuit: humiliores uero aut in crucem tolluntur aut bestiis subiciuntur.

VIII. 5, 1 Paulus libro sententiarum quinto sub titulo ad legem Corneliam testamentariam:

Qui ob falsum testimonium perhibendum [uel uerum non perhibendum] pecuniam acceperit dederit, iudicemue ut sententiam ferat uel non ferat corruperit corrumpendumue curauerit, humiliores capite puniuntur, honestiores publicatis bonis cum ipso iudice in insulam deportantur.

VIII. 6, 1 Idem eodem libro et titulo:

Falsum est quidquid in ueritate non est, sed pro uero adseueratur.

VIII. 7, 1 Ulpianus libro octauo [de officio proconsulis] sub titulo de poena legis Corneliae testamentariae:

Praeterea factum est senatusconsultum Statilio et Tauro consulibus, quo poena legis Corneliae inrogatur ei, qui quid aliud quam testamentum sciens [dolo malo falsum] signauerit signariue

c. 3 = *Paulus* v. 15, 5 *and Dig.* xxii., 5, 16.
c. 4 = *Paulus* v. 23. 1, *and above in the Collatio, title* i. *chap.* 2.
c. 5 = *Paulus* v. 25, 2.
c. 6. *Paulus* v. 25, 3 *is restored from this passage.*
c. 7, 1 poena *till* coierint = *Dig.* xlviii. 10, 9, § 3.

Lines 1-2. *De quaestionibus, i.e.* putting to the torture, to elicit evidence. Paulus v. 14, *de quaestionibus adhibendis* is followed by *de testibus* (v. 15). Here the two titles are quoted jointly.

Line 3. *Uel uarie.* Huschke, following Pithou, emends the MS. reading *aliqua* into *oblique, i.e.*, falsehood by suggestion.

Line 17—p. 100, line 10. Cp. for chap. 5-7, *Digest* xlviii. 10, *l.* 1, *pr.* §§ 1, 2, *ibid.* ll. 20, 21.

Line 17. *Uel uerum non perhibendum* supplied from Paulus.

Paulus, in the Fifth Book of The Sentences, under the title "Of Witnesses and Putting to the Question":

Those persons who have testified falsely, varied their evidence, or betrayed it to either side, are sentenced to exile or deportation to an island, or removal from their position as senators.

The same author, in the [Fifth] Book [of The Sentences], under the [title] "On the *Lex Cornelia* concerning Assassins and Poisoners":

The *Lex Cornelia* inflicts the punishment of deportation on one who has killed a man, gone about armed for that purpose or in order to commit a theft, sold or prepared poison to kill a man, given false evidence to compass another's death, or in any other way caused death.

All these crimes are now, according to settled practice, visited with capital punishment, if the perpetrators are members of the higher classes. If they belong to the lower orders, they are crucified or cast to the wild beasts.

Paulus, in the Fifth Book of The Sentences, under the title "On the *Lex Cornelia Testamentaria*":

Whoever has taken or given money in order to procure false testimony or the withholding of true testimony, or has corrupted a judge or procured his corruption so as to induce him to give or withhold a verdict,—all these, if they belong to the lower classes, shall suffer capital punishment; if to the better classes, confiscation of their property and, together with the corrupt judge, deportation to an island.

The same jurist, in the same book and title: False is that which is not true and yet asserted to be true.

Ulpian, in the Eighth Book [of the Proconsular Functions] under the title "Of the Penalty for infringing the *Lex Cornelia Testamentaria*":

A *Senatusconsultum* was furthermore passed in the Consulship of Statilius and Taurus, by which the penalty prescribed in the *Lex Cornelia* is inflicted upon anyone who fraudulently signs, or procures to be signed, any document other than a will which he knows to be false, also upon those who

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PAGE 98, line 27. *Statilio et Tauro.* Huschke accepts Pithou's emendation *Statilio Tauro et (Scribonio Libone).* The consulship of Statilius Taurus and Scribonius Libo was in the year 16 C.E.

curauerit, item qui ad falsas testationes faciendas testamentaue falsa inuicem dicenda aut consignanda dolo malo coierint,
VIII. 7, 2. Licinio V et Tauro conss. item qui ob instruendam aduocationem testimoniaue pecuniam acceperit pactusue fuerit societatem[ue] coierit aut aliquam de ea [re pac]tionem interposuerit, item si quis coierit ad accusationem innocentium senatus consulto
3 quod Cotta et Messalla factum est coercetur. sed et si quis ob denuntiandum uel non denuntiandum remittendumue testimonium pecuniam acceperit, senatus consulto quod duobus Geminis conss. factum est poena legis Corneliae adficitur. et reliqua.

(TITVLVS VIIII.)

DE FAMILIARIS TESTIMONIO NON ADMITTENDO.

IX. 1, 1 Item Moyses:

Falsum testimonium non dabis aduersus proximum tuum.

2, 1 Vlpianus libro VIIII de officio proconsulis [sub titulo] ad legem Iuliam de ui publica et priuata:

Eadem lege quibusdam testimonium omnino, quibusdam interdicitur inuitis capite octogesimo septimo et capite octogesimo
2, 2 octauo. [capite octogesimo octauo] in haec uerba his hominibus: 'Hac lege in reum testimonium dicere ne liceto, qui se ab eo parenteue eius libertoue cuius eorum libertiue libertaue liberauerit,

c. 2, 2. *This chapter of the Lex Julia is quoted by Callistratus, Dig.* xxii. 5, 3, *with the following omissions: page* 100, *line* 21, libertoue — libertaue, *page* 102, *line* 3, quiue d. c. a. erit *and page* 102, *lines* 4-5. praeterquam . . . . missus est erit.

Line 3. *Licinio V. et Tauro Conss.*; this is only found in the Berlin MS. Mommsen gives the date as 44 C.E., in the Consulship of *Vinicius* (2nd year), and of *Taurus*. Huschke thinks that the phrase, *Licinio V. et Tauro conss*, belongs to the beginning of the chapter where originally it was written *Statilio Tauro et Scribonio Libone consulibus*. The copyist, accustomed to seeing consuls designated by single names only, wrote in the text *Statilio et Tauro*, interpreted *Scribonio* as *Scribe Ibonio*; noted it in the margin as a correction *L* (=lege) *Ibonio, u* (= *uel*) *Libone, et Tauro conss*. Another scribe turned this into *Licinio V.*°*et Tauro Conss.*

Line 6. *Accusationem*, as corrected by Pithou. Cp. *Digest* xlvii. 13, *l.* 2, *qui in accusationem coierint*. Mommsen approves, but reads with the MSS. *occisionem*, which is very doubtful.

Line 7. *Cotta et Messalla*, 20 C.E. Cp. for this rule *Digest* xlvii. 13, *l.* 2.

Line 9. *Duobus Geminis conss.*, 29 C.E.

Lines 7-10. For this rule, cp. *Digest* xlvii. 13, *l.* 1 and 2, and *ibid.* xlviii. 10, *l.* 1 § 2.

Line 12. *De [Familiaris Testimonio non admittendo.* The Berlin MS. has this superscription, beginning the next title with the word *Decimo*. The subject matter differs from that of the previous title. It is headed by a Scriptural text, and it is most probably an independent title. The arguments against this view are that it commences with the word *item*, and that the previous title has, in our MSS., no subscription.

Line 14. Exod. xx. 16: Thou shalt not bear false witness against thy neighbour.

have conspired to concoct false evidence, or declare, or sign false wills, on each other's behalf; in the Consulship of Licinus, the fifth year, and of Taurus.

Furthermore, whoever has taken money for legal advice or evidence, entered into a contract, partnership or any other compact for this purpose, or engaged in a conspiracy to accuse the innocent, will be punished under the *Senatusconsultum* issued in the Consulship of Cotta and Messalla.

Furthermore, if one has taken money to denounce or refrain from denouncing another, or withhold testimony, he will, in accordance with the *Senatusconsultum* passed in the Consulship of the two Gemini, suffer the penalty of the *Lex Cornelia*, etc.

NINTH TITLE.

"OF EXCLUDING THE TESTIMONY OF RELATIVES."

Likewise Moses:

"Thou shalt not give false witness against thy neighbour."

Ulpian, in the Ninth Book of The Pro-consular Functions, under the Title "On the *Lex Julia de ui publica et priuata*":

In the eighty-seventh and eighty-eighth chapters of this law, it is laid down that, under this law, some classes are altogether inhibited from giving evidence; others, if they are unwilling to do so.

The eighty-eighth chapter refers to these persons in the following terms: Under this statute, the following persons may not give evidence against a party to a suit: One who shall have emancipated himself from the said party; from his ascendant; from the freedman of either of them, or from the freedman's freedman, or from the freedwoman [of any of the foregoing]; or who shall be under the age of puberty; or shall have [been convicted in criminal trial and] not been restored to his previous status, or

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Page 100, line 15. *Libro* viiii.; Huschke gives xi. Is this a misprint for ix? Cujas, relying on *Digest* xxii. 5, *l.* 19, corrects viii.

Line 16. ***De ui publica et priuata.*** For definition, see Justinian's Institutes, iv. 15, 6, and Gaius iv. 155.

Line 19. ***His hominibus.*** According to Huschke, these words begin the quotation: "The following persons are, under this statute, not permitted to give evidence."

Line 20. ***reum:*** strictly "defendant," here "a party to a suit."

quiue inpubes erit, quiue [iudicio publico damnatus est, qui] eorum in integrum restitutus non est, quiue in uinculis custodiaque publica erit, quiue depugnandi causa auctoratus erit, quiue ad bestias depugnare se locauit locauerit, praeterquam qui iaculandi causa ad urbem missus est erit, palamue corpore quaestum faciet faceritue, quiue ob testimonium dicendum [uel non dicendum] pecuniam accepisse iudicatus erit. nec uo[lens] quis eorum hac
IX. 2, 3 lege in reum testimonium dicit. capite octogesimo septimo his: 'inuiti in reum testimonium ne dicunto qui sobrinus est ei reo propioreue cognatione coniunctus, quiue socer gener uitricus priuignusue eius erit.' et reliqua.

IX. 3, 1 Paulus libro sententiarum [V] sub titulo de testibus et quaestionibus:

Suspectos testes et eos uel maxime, quos accusator de domo eduxit uel uitae humilitas infamauerit, interrogari non placuit:
2 in testibus enim et uitae qualitas spectari debet et dignitas. in adfinem uel cognatum inuiti testes interrogari non possunt.
3 aduersus se inuicem parentes et liberi itemque [patroni et] liberti nec uolentes ad testimonium admittendi sunt, quia rei uerae testimonium necessitudo personarum plerumque corrumpit.

(TITVLVS X.)

DE DEPOSITO.

X. 1, 1 Moyses dicit:

Si aliquis dabit proximo suo argentum aut uas seruare et furatum fuerit de domo hominis, si inuenitur qui furatus est, reddet duplum. quod si non fuerit inuentus fur, accedet is qui commendatum susceperat ante dominum et iurabit nihil se nequiter egisse de omni re commendata proximi sui et liberabitur.

c. 2, 3. *This chapter of the Lex Julia is quoted by Paulus, Dig.* xxii., 5, 4.
c. 3 = *Paulus* v., 15, 1-3.

Line 4. *Locauit, locauerit*, so in the MSS. Huschke prefers *locabit, locauerit*, on the analogy of *faciet, feceritue* (lines 5, 6). The analogy in favour of the reading in the text is *missus est erit* (line 5).

Line 4. *iaculandi, i.e.*, to exercise as a light-armed soldier.

Lines 12-13. *De testibus et quaestionibus.* The passage that follows is from the title *de testibus*. As this title (v. 15) is preceded by the title *de quaestionibus habendis* and succeeded by the title *de seruorum quaestionibus*, the Collatio gives the reference as *de testibus et quaestionibus*.

Line 14. *Suspectos.* After this word, Huschke supplies from Paulus *gratiae*.

Lines 24-28. Exod. xxii. 7, 8, 11: If a man shall deliver unto his neighbour money or stuff to keep, and it be stolen out of the man's house; if the thief be found, let him pay double.

shall serve as a convict in chains or in public custody; or shall have engaged himself as a gladiator; or shall have hired himself or shall do so, to fight with wild beasts, but not if he shall have been or shall be sent to the city "to throw javelins"; or one who for profit shall act or shall have acted as a public performer; or anyone who shall have been found guilty of accepting money for giving [or withholding] evidence;—none of the above classes may, according to this statute, give evidence against a party to a suit, even if they are willing to do so.

In the eighty-seventh chapter [such persons are referred to] in these terms: "Let not the following give evidence against their will against a party to a suit: a cousin or nearer relative to the party; his father-in-law, son-in-law, stepfather, stepson," etc.

Paulus, in the [Fifth] Book of the Sentences, under the Title "Of Witnesses and Questions":

It is settled that witnesses suspected of partiality, especially those whom the accuser brings from his own home, or whose degraded life has made them infamous, are not examined; for, in regard to witnesses, we must look both to the character of their lives and to their rank.

Witnesses cannot be compelled to give evidence against a relative by marriage or blood.

Parents and children, patrons and their freedmen, are not to be admitted as witnesses against each other, even if they are willing, because the close relationship of the parties usually vitiates their evidence.

TENTH TITLE.

"OF DEPOSIT."

Moses says:

"If a man shall give to his neighbour silver or a vessel to keep, and it shall have been stolen from the man's house, if the thief is found, he shall pay double; if the thief shall not be found, then he who had undertaken the charge shall come nigh before the Lord, and shall swear that he has not acted iniquitously in respect of anything which his neighbour had entrusted to him, and he shall be set free."

Page 102 (*cont.*) If the thief be not found, then the master of the house shall be brought unto the judges, to see whether he hath put his hand unto his neighbour's goods.....

Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbour's goods; and the owner of it shall accept thereof, and he shall not make it good. The text in the Collatio is a condensed summary of Ex. xxii. 7-11. The word כלים rendered in the A.V. "stuff," means utensils or, in later Hebrew, garments.

Line 24. *uas:* Huschke has *suos.*

X. 2, 1 Modestinus libro differentiarum secundo [sub titulo] de deposito et commodato:

Commodati iudicio conuentus et culpam praestare cogitur: qui uero depositi conuenitur, de dolo, non etiam de culpa condemnandus est. commodati enim contractu, quia utriusque contrahentis utilitas interuenit, utrumque praestatur: in depositi uero causa sola deponentis utilitas uertitur et ibi dolus tantum 2 praestatur. sed in ceteris quoque partibus iuris ista regula custoditur: sic enim et in fiduciae iudicium et in actionem rei uxoriae dolus et culpa deducitur, quia utriusque contrahentis 3 utilitas interuenit. in mandati uero iudicium dolus, non etiam culpa deducitur. quamuis singulariter denotare liceat in tutelae iudicium utrumque deduci, cum solius pupilli, non etiam tutoris 4 utilitas in administratione uersetur. depositi damnatus infamis est: qui uero commodati damnatur, non fit infamis: alter enim 5 propter dolum, alter propter culpam condemnatur. actione depositi conuentus cibariorum nomine apud eundem iudicem utiliter experitur: at is cui res commodata est inprobe cibariorum exactionem intendit. inpensas tamen necessarias iure persequitur, 6 quas forte in aegrum uel alias laborantem inpenderit. res deposita si subripiatur, dominus dumtaxat habet furti actionem, quamuis eius apud quem res deposita est intersit ob inpensas in rem factas rem retinere. is uero cui res commodata est furti 7 experiri debebit, si modo soluendo fuerit. actio commodati semper in simplum competit, depositi uero nonnumquam in duplum, scilicet si ruinae uel naufragii uel incendii aut tumultus causa res deponatur.

c. 2, 5. *to* experitur = *Dig.* xvi. 3, 23.

Line 2. ***Et commodato***, with Cujas and Huschke. Mommsen retains ***uel commendato*** from the MSS., which may be explained as an interpretation of ***Deposito***.

Lines 5-6. ***Utriusque contrahentis utilitas***. The owner has his goods in safe custody, the borrower the advantage of their use. Cp. ***Digest*** xiii. 6, *l.* 5, § 2; *ibid.* L., 17, *l.* 23.

Line 17. ***Depositi***. Huschke inserts ***serui*** after ***depositi***, and accordingly reads in line 18 ***seruus commodatus***, instead of ***res commodata***. The counter-claim for cost of keep can, indeed, apply to other deposits than slaves. But ***aegrum uel alias laborantem*** (line 20) clearly refers to the slave.

Lines 20-23. ***Res deposita.....retinere***. Cp. Gaius iii. 207: "As the depositary is not answerable for the safe keeping of the thing deposited, but only for fraud, and, if it is stolen, is not compellable to make restitution by action of deposit, he is not interested in its loss; and, therefore, the action of theft is only maintainable by the depositor."

Lines 23-24. ***Is uero.....fuerit***. The borrower for use is responsible for the safe keeping of the article borrowed, and has to pay compensation if it is stolen. Hence he can bring an action of theft. Cp. ***Digest*** xlvii. 2, *l.* 14 ***fin. nam his damus furti actionem si sint soluendo quoniam periculum rerum ad eos pertinet***.

Lines 25-27. ***Depositi.....deponatur***. Cp. ***Digest*** xvi. 3, *l.* 1, § 1 and *ibid. l.* 18.

Modestinus, in the Second Book of "The Distinctions," [under the Title] "Of Deposit and Loan for Use":

Anyone sued in an action of loan for use is compelled to make good a loss, even if it arise from negligence. But in an action of deposit, the defendant is only to be condemned for fraud, but not for negligence. For, in a contract of loan for use, as both parties benefit, there is a liability to make good a loss arising from either cause. But in the case of deposit, the depositor has the sole advantage, and therefore only losses arising from fraud are made good. This rule is also observed in other parts of the Law. Thus, in an action for trust and in an action *rei uxoriae*, negligence as well as fraud is taken into account, because both parties to the contract benefit. In an action of agency, fraud alone and not negligence also, is taken into account, though we may note the anomaly that in an action of guardianship both negligence and fraud are taken into account, notwithstanding that guardianship is exclusively for the benefit of the ward and not for that of his guardian. A person condemned in an action of deposit is infamous; one condemned in an action of loan for use does not become infamous. For the former is condemned for fraud, the latter for negligence. Anyone sued in an action of deposit can counterclaim before the same judge for cost of keep. But the borrower for use cannot justly claim the cost for keep. He can, however, sue for necessary disbursements, which he has, for instance, laid out on [a slave] when ill or otherwise distressed.

If the thing deposited has been stolen, only the owner can bring an action for theft, though the depositary has an interest in the detention of the deposit for his outlays on it. But it is the borrower for use who must sue for theft, provided he is solvent. In an action of loan for use, the claim is always for the value of the article lent; but in one of deposit, twice the value is sometimes claimed, namely, if the article has been deposited in consequence of the collapse of a house, shipwreck, conflagration or riot.

Hermogenian, under the Title "Of Deposit," inserts in his Code the following Constitutions:

The same Emperors to Flavius Munatius. It is undoubtedly the law that one who has undertaken the care of a deposit has to make good any loss arising from his fraud, but not loss due to accident. As, according to your statement, certain of the things entrusted to you were destroyed by fire, and there was no fraudulent

X. 3, 1 Hermogenianus sub titulo depositi huiusmodi inserit constitutiones:

Idem Augg. [et] Caess. Fl. Munatio. Eum qui suscepit depositum dolum, non etiam casum praestare certi iuris est. cum itaque proponas ignis ui quaedam cremata de his quae tibi fuere commendata nec ullum dolum in subtrahendis rebus adhibitum, rector prouinciae nihil contra iuris rationem fieri patietur. et quoniam necti quereris moras adhibita uarietate, negotium inter uos ortum secundum iuris ordinem sua ratione decidetur.

a. 293 Subscripta VIII k. Iul. Serdica Augustis conss.

X. 4, 1 Idem Augg. et Caess. Fl. Aurelio Altenico Andronico. Eos penes quos uestem et argenti materiam deposuisse proponis apud rectorem prouinciae conuenit interrogari, qui eos, siue teneant siue dolo fecerint quominus possint restituere, secundum bonam fidem tibi satisfacere conpellet. Subscripta VI. k. April. Sirmi

a. 294 Caess. conss.

X. 5, 1 Idem Augg. et Caess. Aurelio et Eustathio et Diosimo. Is, qui depositum suscepit, ultra dolum, si non aliud specialiter conuenit, praestare nihil necesse habet. cuius memor iuris rector prouinciae partium allegationibus auditis pro repertorum qualitate suam ordinabit sententiam. Subscripta XIIII k. Nou.

a. 294? Appiaria.

X. 6, 1 Idem Augg. et Caess. Septimiae Quadratillae. Qui dolo malo depositum non restituit, suo nomine conuentus ad eius restitutionem cum infamiae periculo urguetur. Subscripta prid. idus

a. 294 Decembres Nicomedia, CC. conss.

X. 7, 1 Paulus libro secundo sententiarum sub titulo de deposito:

Deponere possumus apud alium id quod nostri iuris est uel
2 alieni. depositum est quasi diu positum. seruandum est, quod
3 [ad] breue tempus custodiendum datur. deponere uidetur, qui in metu ruinae incendii naufragii apud alium custodiae causa

c. 6 = *Cod. Iust.* iv. 34, 10.

c. 7, 1-4. *Paulus* ii. 12. 1-4 *is restored from this passage.*

Line 3: *Augg.* [*et*] *Caess.*, here, and also below, in the superscriptions to chaps. 4, 5 and 6, refer to Diocletian and Maximian. See Hermogenian Code, Title xiii., *de deposito* (Haenel's edition, p. 74), where the same superscriptions are given, and where in Title xii. the superscription is *Impp. Diocletianus et Maximianus.*

Lines 7-9. *Et quoniam.....decidetur.* Flauius Munatius apparently had a claim against a depositor. The depositor refused to satisfy this claim on the ground that he had a counter-claim for the articles he had deposited, some of which had got burnt. The subject of the counter-claim was quite foreign to that of the claim: hence the petitioner's plaint and the Emperor's answer.

Line 20. *Repertorum*, with Huschke. Mommsen retains *ereptorum*, as in the MSS.

abstraction of them, the Governor of the Province will not permit anything to be done contrary to the principles of the law. And since you complain that delays are being devised by the introduction of extraneous matters, the case that has arisen between you both shall be decided in the ordinary course of the law on its own merits. 23rd June, at Serdica, in the Consulship of the Emperors.

The same Emperors to Flavius Aurelius Altenicus Andronicus. Those with whom you say you have deposited a garment and a quantity of silver should be examined before the governor of the Province, who will compel them to meet your claim equitably, whether they still hold the deposit or have fraudulently put it out of their power to restore it. 27th March, at Sirmium. The Emperors.

The same Emperors to Aurelius, Eustathius and Diosimus. Unless there is a special covenant, the depositary is not under the necessity of making good losses beyond those arising out of fraud. The Governor of the Province will, when hearing the statements of the parties, bear this principle in mind, and frame his decision in accordance with the findings. 19th October, at Appiaria.

The same Emperors to Septimia Quadratilla. A depositary who fraudulently fails to restore an article, on being sued in an action of deposit, is forced to make restitution, and, at the same time, is liable to be declared infamous. 12th December, at Nicomedia. The Emperors.

Paulus, in the Second Book of The Sentences, under the Title "Of Deposit":

We can deposit with another an article that belongs to us or to a third party.

Depositum is equivalent to *diu positum* [placed for a long time.] A thing given to be taken care of for a brief period is said to be kept.

It is a deposit when a thing is placed in another's charge for safety's sake, owing to apprehension caused by the fall of a house, fire or shipwreck.

Page 106, line 22. *Appiaria. Caess. conss.* should be added both here and in the Hermogenian Code.

Lines 23-26. Hermogenian Code xiii. 4; Justinian's Code iv. 34, *l.* 10.

Line 28. *Uel alieni.* A thief who deposits property of another person with a third party can sue in an action of deposit. *Digest* v. 1, *l.* 64 *pr.*; *ibid.* xvi. 3, *l.* 1, § 39; l. 31 *fin.*

Line 29. *diu positum.* But compare for another explanation *Digest* xvi. 3, *l.* 1 *pr.*: *Depositum est quod custodiendum alieni datum est, dictum ex eo quod ponitur. praepositio enim de auget positum, ut ostendat totum fidei eius commissum quod ad custodiam rei pertinet.*

Line 31. *In metu ruinae incendii naufragii.* See above, chap. 2, § 7, for *miserabile depositum.*

X. 7, 4 deponit. deponere uidetur et is, qui suspectam habens uel minus idoneam custodiam domus uel uim latronum timens apud aliquem 5 rem custodiendam commendat. si sacculum uel argentum [signatum] deposuero et is penes quem depositum fuit me inuito 6 contrectauit, et depositi et furti actio mihi in eum conpetit. ob 7 res depositas dolus tantum praestari solet. in iudicio depositi ex 8 mora et fructus ueniunt et usurae rei depositae praestantur. si quis rem penes se depositam apud alium deposuerit, tam ipse directam quam is qui apud eum deposuit utilem actionem depositi 9 habere possunt. si pecuniam deposuero eaque uti tibi permisero, mutua magis uidetur quam deposita ac per hoc periculo tuo erit. 10 si rem apud te depositam uendideris eamque redemeris, post perdideris, semel admisso dolo perpetua depositi actione teneberis. 11 ex causa depositi lege duodecim tabularum in duplum actio datur, edicto praetoris in simplum.

X. 8, 1 Gregorianus libro IIII sub titulo de deposito:

Imp. Alexander A. Mestrio militi. Incursu latronum ornamenta deposita apud interfectum ab eis perierunt: detrimentum ad heredes eius qui depositum accepit, qui dolum tantum praestare debuit, non pertinet. quod si praetextu latrocinii commissi res, quae in potestate heredis sunt, non restituuntur, tam depositi quam [ad] exhibendum actio, sed et in rem uindicatio conpetit. Prop. VII kal. Iul. Maximo bis et Urbano conss.

a. 234

X. 9, 1 Paulus libro responsorum V sub titulo ex locato et conducto:

'Imp. Antoninus Iulio Agrippino. Dominus horreorum

c. 7, 5 = *Paulus* ii. 12, 5; *Dig.* xvi. 3, 29 *pr.*
c. 7. 6-11. *Paulus* ii. 12, 6-11 *is restored from this passage.*
c. 8 = *Cod. Iust.* iv. 34, 1. c. 9 = *Cod. Iust.* iv. 65, 1.

Lines 3-4. *Sacculum uel argentum (signatum).* According to Dirksen's *Manuale, argentum signatum* means silver coins, money. But Mommsen well explains that *signatum* is equal to *obsignatum*; the phrase would mean: "A purse, or money in a sealed package."

Lines 5-6. *Ob res.....solet.* Cp. above, chap. 2, § 1.

Lines 6-7. *In iudicio.....praestantur.* Cp. *Digest* xvi. 3, *l.* 1, § 24; *ibid. l.* 25, § 1, and *ibid. l.* 29, § 1; Cp. Justinian's Code iv. 34, *l.* 2.

Lines 8-9. *Ipse directam.* Cp. *Digest* xvi. 3, *l.* 1, § 11.

Line 9. *Utilem actionem.* Cp. Justinian's Code iii. 42, *l.* 8.

Line 10. *Eaque uti.* With Blume, after comparison of *Digest* xii. 1, *l.* 4. *pr.*; *ibid. l.* 9, § 9 and *l.* 10. Mommsen has *eamque.*

Lines 10-11. *Si pecuniam.....tuo erit.* Cp. *Digest* xii. 1, *l.* 9, § 9.

Line 13. *Perpetua.* Huschke prefers *perpetuata* on the strength of the verbal form in *Digest* xlv. 1, *l.* 91, § 3 and xlvi. 1, *l.* 58, § 1.

It is also a deposit when a thing is entrusted to another to be taken care of, because the owner is suspicious or ill-assured of the safety of his house, or fears an attack of robbers.

If I have deposited a purse or silver [sealed up], and the depositary has laid hands on it against my wish, I will be able to sue him for deposit as well as for theft.

In an action of deposit, damages are given for fraud.

In an action of deposit, profit and interest on the value of the article deposited will, where there has been delay [in restitution], have to be paid.

If a person deposits the article entrusted to him with a third party, the first depositary will have a direct, the original depositor an indirect, action of deposit.

If I have deposited with you money which I have given you permission to use, it is regarded as a loan rather than as a deposit, and consequently its loss will be at your risk.

If you sold the thing deposited with you and then bought it back and subsequently lost it, you will, once having committed a fraud, be liable in an action of deposit that can always be brought.

In an action of deposit, the Law of the Twelve Tables allows a claim for twice the value of the article deposited; the Prætor's Edict, for the single value only.

Gregorian, in the Fourth Book, under the Title "Of Deposit."

The Emperor Alexander to Mestrius, a soldier. In an attack by robbers, a man was killed, and ornaments deposited with him were destroyed. The loss will not fall on the heirs of the one who accepted the deposit, since he was only liable to make good losses due to his fraud. But if, under the pretext that a robbery had taken place, articles which are in the heir's possession are not restored, the owners will be entitled to actions of deposit and for production, as well as to a *vindicatio* for the thing itself. Issued 25th June, in the Consulship of Maximus (the second year) and Urban.

Paulus, in the Fifth Book of the Responses, under the Title "Of Hiring and Letting."

The Emperor Antoninus to Julius Agrippinus. The owner of

PAGE 108, line 13. *Depositi actione.* Cp. *Digest* xvi. 3, *l.* 1, § 25.

Line 15. *In simplum.* Cp. Gaius iv. 47. Where the *depositum* was *miserabile*, the claim, even by the praetor's edict, was for double damages. See above, in this title, chap. 2, § 7 and *Digest* xvi. 3, *l.* 18.

Lines 16-23. The Gregorian Code (Haenel's edition), iv. 3. Whether the additions in Justinian's Code are due to Tribonian or have been left out of the Collatio is doubtful.

periculum uis maioris uel effracturae latronum praestare non cogitur. his cessantibus si quid ex depositis rebus inlaesis extrinsecus horreis perit, damnum depositorum sarciri debet.
a. 213 Prop. IIII non. Nou. Antonino IIII cons.' Paulus respondit: satis praepositam constitutionem declarare his, qui horrea locant, maiorem uim inputari non posse.

(TITVLVS XI.)

DE ABACTORIBVS.

XI 1, 1 Moyses dicit:

Si quis inuolauerit uitulum aut ouem et occiderit aut uendiderit, quinque uitulos restituet pro uitulo uno, quattuor
2 oues pro oue una. quod si non habet unde reddat, uenundetur pro furto.

XI. 2, 1 Paulus libro sententiarum V sub titulo de abactoribus:

Atroces pecorum abactores plerumque ad gladium uel in metallum, nonnumquam autem in opus publicum dantur. atroces autem sunt, qui equos et greges ouium de stabulo uel de pascuis abigunt uel si id saepius aut ferro aut conducta manu faciunt.

XI. 3, 1 Idem Paulus eodem libro et titulo:

Abactores sunt, qui unum equum uel duas equas totidemque boues, [oues] uel capras decem, porcos quinque abegerint. quidquid uero intra hunc numerum fuerit ablatum, in poena furti pro qualitate eius aut in duplum aut in triplum conuenitur aut fustibus caesus in opus publicum unius anni datur aut sub poena uinculorum domino restituetur.

c. 2. *From this passage,* ***Paulus*** v. 18, 2 *is restored.*
c. 3 = ***Paulus*** v. 18, 1.

Line 1. *Latronum;* after this word, Huschke supplies from Justinian's Code *conductori*. The rescript cannot refer to the case of a depositary, for he is not liable for negligence, unless the passage means that the Emperor inferred from the uninjured condition of the premises that the depositary's plea of *force majeure* was fraudulent. Possibly the words *depositis* (line 2) and *depositorum* (line 3) should not be pressed, and the case be taken as one of *locatio*.

Lines 4-6. *Paulus respondit.....non posse.* This is of course not found in Justinian's Code iv. 65, *l.* 1.

Lines 10-13. Exod. xxii. 1 and conclusion of 3: If a man shall steal an ox, or a sheep, and kill it, or sell it; he shall restore five oxen for an ox, and four sheep for a sheep.....if he have nothing, then he shall be sold for his theft.

Line 15. *Ad gladium: i.e.*, to fight in the arena with wild beasts, but armed with a sword. See, however, below in this title, chap. vii., § 3, that there was a doubt as to the precise degree of severity of this punishment.

Lines 15-16. *Atroces.....dantur.* Cp. *Digest* xlvii. 14, *l.* 1 *pr.* and § 3, *ibid. l.* 2.

storehouses is not bound to make good the loss arising from *force majeure*, or the breaking in of robbers. But where such circumstances are absent, and deposits have been destroyed without any injury to the exterior of the store-houses, the loss of the deposits must be made good. Issued 2nd November, in the fourth year of the Emperor Antoninus.

Paulus wrote in a Response that the foregoing Constitution makes it clear that those who let storehouses cannot be made responsible for *force majeure*.

TITLE XI.

"OF CATTLE-RAIDERS."

Moses says:

"If anyone steal a calf or sheep, and kills or sells it, he shall restore five calves for one calf, four sheep for one sheep. But if he have not the means to repay, he shall be sold for the theft."

Paulus, in the Fifth Book of the Sentences, under the title "Of Cattle-raiders":

Hardened cattle-raiders are generally given up to the sword, or sent to the mines; sometimes, however, they are sent to the public works. They are regarded as hardened when they take horses from the stable, flocks of sheep from the fold, or either from the pastures: whether they do this repeatedly, or (even on a single occasion) with arms or accompanied by a band of men.

The same Paulus, in the same book and title:

Cattle-raiders are those who have taken away one horse or two mares, the same respective numbers of large-horned cattle, ten sheep or she-goats, or five swine. If a smaller number has been taken, the raider is sued for theft for double or threefold damages according to the character of the theft, or is sentenced to a flogging, followed by a year's labour on the public works; or [if a slave] is restored to the master but has to wear chains.

Page 110, lines 20-21. *Totidemque boues; i.e.*, one ox or two cows. Cp. *Digest* xlvii. 14, *l.* 3 *pr.*

Line 21. [*Oues*] as given in *Digest* xlvii. 14, *l.* 3, *pr.*

Line 23. *Triplum*; Huschke prefers *quadruplum*. A thief taken in the act had to pay fourfold; not taken in the act, twofold. Whether the offence for which the penalty was threefold could properly be called Theft was doubted. Cp. Justinian's Institutes iv. 1, 3; Gaius, iii. 183.

Line 24. *Aut sub poena*; Huschke supplies after *aut* (*seruus*). This co-relative may, however, be understood from *domino*.

XI. 4, 1 Idem Paulus eodem libro et titulo :

Si ea pecora, de quibus quis litigauerat, abegerit, ad forum remittendus est atque ita conuictus in duplum uel in triplum furis more damnatur.

XI. 5, 1 Idem Paulus eodem libro et titulo :

Qui bouem uel equum errantem quodue aliud pecus abduxerit, furem magis eum quam abactorem constitui placuit.

XI. 6, 1 Paulus libro singulari de poenis paganorum sub titulo de abigeis dixit :

Cum durius abigei damnantur, et ad gladium traduntur: 2 itaque diuus Pius ad concilium Baeticae rescripsit. qui pecora, de quibus litigabat, abegit, ad forum remittendus est et si uictus fuerit, in duplum uel quadruplum condemnandus.

XI. 7, 1 Ulpianus libro octauo de officio proconsulis sub titulo de abigeis :

De abigeis puniendis ita diuus Hadrianus rescripsit concilio Baeticae : 'Abigei cum durissime puniuntur, ad gladium damnari solent. puniuntur autem durissime non ubique, sed ubi frequentius est hoc genus maleficii : alioquin et in opus et 2 nonnumquam temporarium damnantur. ideoque puto apud uos quoque sufficere genus poenae, quod maximum huic maleficio inrogari solet, ut ad gladium abigei dentur : aut si quis tam notus et tam grauis in abigendo fuit, ut prius ex hoc crimine aliqua 3 poena affectus sit, hunc in metallum dari oportere.' rescriptum diui Hadriani sic loquitur, quasi grauior poena sit metalli : nisi forte hoc sensit diuus Hadrianus gladii poenam dicendo ludi 4 damnationem. est autem differentia inter eos qui ad gladium et eos qui ad ludum damnantur: nam ad gladium damnati confestim consumuntur uel certe intra annum debent

c. 4 = *Paulus* v. 18, 3.
c. 5. *From this passage Paulus* v. 18, 4, *is restored.*
c. 7, 1 = *ig.* xlvii. 14. 1 *pr.*

Lines 2-3. *Ad forum remittendus.* Cp. above, title vii. 4, § 1.

Lines 2-4. See below, chap. 6, § 2. Note line 3, *triplum*, for which Huschke prefers *quadruplum* as below in line 13.

Lines 6-7. *Qui bouem.....placuit.* Cp. *Digest*, xlvii. 14, *l.* 1, § 1.

Line 10. *Ad gladium.* See above, chap. 2, 1, and the note as to explanation, and Cp. below chap. 7, 1-4.

Traduntur. With Schulting. Mommsen follows the MSS. and editors, and reads *tradantur.*

Lines 25-27. *Nisi forte.....damnationem.* Cp. Theodosian Code ix. 18. *Liber autem sub hac forma in ludum detur gladiatorium ut antequam aliquid faciat quo se defendere possit, gladio consumatur.*

Paulus, in the same book and title:

If a litigant raids flocks which are the subject of his suit, he is to be sent for trial to the Civil Court; and, if there found guilty, is condemned, as a thief, to pay twice or thrice the value.

The same Paulus, in the same book and title:

To drive off a stray ox, horse or other cattle is, according to settled rule, treated as theft rather than cattle-raiding.

Paulus, in his single book "Concerning the Punishments of Peasants," under the title "Of Cattle-raiders":

When cattle-raiders are punished severely, they are even delivered to the sword. And so the late Emperor Antoninus Pius wrote in a rescript to the Council of Baetica.

A litigant who raids cattle, the subject of a suit, is to be sent for trial to the Civil Court, and, if found guilty, is to be condemned to pay twice or four times the value.

Ulpian, in the Eighth Book of The Proconsular Functions, under the title "Of Cattle-raiders":

The late Emperor Hadrian, in a rescript to the Council of Baetica concerning the punishment of cattle-raiders, wrote as follows:

When cattle-raiders are punished very severely, they are usually sentenced to "the sword." They are not, however, punished with extreme severity in all districts, but only where this class of offences is rampant; otherwise, they are condemned to labour in the public works; and that, sometimes, only for a limited period.

I am, accordingly, of the opinion that the highest penalty inflicted for this offence should suffice in your jurisdiction, and that the raiders should be sentenced to the sword; or, if anyone has been so notorious and persistent in raiding as to have been previously punished for this offence, he should be sent to the mines.

The terms of the Emperor Hadrian's rescript would imply that labour in the mines is the severer punishment. Unless, possibly, the Emperor Hadrian meant by the phrase "punishment of the sword" the gladiatorial games. There is, however, a distinction between those sentenced to the sword and those sentenced to the games; the former are despatched without delay, or at any rate ought to be despatched within a year, and this instruction is contained in the Orders. But those condemned

consumi: hoc enim mandatis continetur. enimuero qui in ludum damnantur, non utique consumuntur sed etiam pilleari et rudem accipere possunt post interuallum, siquidem post quinquennium pilleari, post triennium autem rudem induere eis permittitur.

XI. 7, 5 eodem rescripto diui Hadriani diligentissime expressum est non ubique parem esse poenam abigeorum.

XI. 8, 1 Idem Ulpianus libro et titulo qui supra:

Abigei autem proprie hi habentur, qui pecora ex pastu et ex armentis subtrahunt et quodammodo depraedantur et abigendi studium quasi artem exercent equos de gregibus uel boues de armentis abducentes. ceterum si quis bouem aberrantem uel equum [relictum] in solitudine abduxerit, non est abigeus, sed

2 fur potius. sed et qui porcum uel capram uel uerbecem abducunt, non tam grauiter ut hi qui maiora animalia abigunt plecti debent.

3 quamquam autem Hadrianus metalli poenam, [item] temporari [operis] uel etiam gladii praestituerit, attamen qui honestiore loco nati sunt non debent ad hanc poenam pertinere, sed aut relegandi

4 erunt aut remouendi ordine. Romae tamen etiam bestiis subici abigeos uidemus: et sane qui cum gladio abigunt, non inique hac poena adficiuntur.

(TITVLVS XII.)

DE INCENDIARIIS.

XII. 1, 1 Moyses dicit: Si exierit ignis et inuenerit spinas et conprehenderit areas uel spicas aut campum, aestimationem restituet ille qui succendit ignem.

XII. 2, 1 Paulus libro sententiarum [quinto] sub titulo de incendiariis:

Qui casam aut uillam inimicitiarum gratia incenderunt, humiliores in metallum aut in opus publicum damnantur,

2 honestiores in insulam relegantur. fortuita incendia, quae casu uenti furentis uel incuria ignem supponentis ad usque uicini agros euadunt, si ex eo seges uel uineae uel oliuae uel fructiferae arbores concrementur, datum damnum aestimatione sarciatur.

c. 8 = *ig.* xlvii. 14, 1-4. c. 2 = *Paulus* (*Vesont.*) v. 20, 2, 3.

Line 1. *Mandatis*, *i.e.* orders to the governor of a prison or director of the gladiatorial contests.

Line 9. *Abigendi* from *Digest*. Mommsen retains *abigei* from the MSS.

Line 12. *Relictum* supplied from the *Digest*, *Equos in solitudine relictos*. Mommsen omits, following the MSS.

Line 15. *Item temporari operis*. *Item* and *operis* are supported by the MSS. and *Digest*; but omitted by Mommsen. See above, chap. vii. § 1, for the terms of Hadrian's rescript: *in opus et nonnumquam temporarium damnantur*.

Lines 23-25. Exod. xxii. 6: If fire break out, and catch in thorns, so that the stacks of corn, or the standing corn, or the field be consumed therewith; he that kindled the fire shall make restitution.

to the games are not necessarily despatched; they may even, after a time, be restored to freedom, or be discharged from the obligation of being a gladiator; since, after five years, they may be restored to freedom, while, on the expiration of three years, they are permitted to receive their discharge from the gladiatorial games.

The same Rescript of the late Emperor Hadrian emphasizes the principle that the punishment of cattle-raiders is not in all places alike.

Ulpian, in book and under title as above:

Strictly speaking, those are regarded as cattle-raiders, who steal cattle from the pasture or the folds, making, so to speak, booty of them; and practise cattle-raiding as a profession, driving off horses from the droves or oxen from the herds. But if one drives off a stray ox or a solitary horse he is not a raider, but rather a thief.

Again, driving off a swine, goat or wether, ought not to be punished as severely as the raiding of larger beasts.

And though Hadrian prescribed labour in the mines, or on the public works, for a limited term, or even the sword as the penalty, offenders of the better classes should nevertheless not be subjected to such a punishment; they are either to be deported or degraded.

We see, however, that at Rome cattle-raiders are even flung to the wild beasts; a punishment which is not unjust for such as make armed raids on cattle.

TWELFTH TITLE.

"OF INCENDIARIES."

Moses says: If a fire break out and come upon thorns and consume threshed-out corn, or standing corn, or a field, he who kindled the fire shall restore the value.

Paulus, in the (Fifth) Book of The Sentences, under the Title "Of Incendiaries":

Those of the lower ranks, who, out of enmity, have set fire to a hut or country mansion are sentenced to the mines or public works: should they be of the better classes, to deportation to an island.

If, owing to an unexpected gale of wind, or the carelessness of the one who lit the fire, accidental conflagrations spread to a neighbour's lands, and, as a result, crops of corn, vines, olive-trees, or other fruit-bearing trees are burnt down, the damage caused must be assessed and made good.

PAGE 114, lines 27-29. *Qui casam.....relegantur.* Cp. *Digest* xlviii. 19, *l.* 28, § 12.
Lines 29-32. *Fortuita incendia.....sarciatur.* Cp. *Digest* ix. 2, *l.* 30, § 3.
Line 31. *uineae.* Mommsen has *uinea.*

XII. 3, 1 Idem Paulus eodem libro et titulo:

Commissum uero seruorum, si domino uideatur, noxae
2 deditione sarcitur. messium sane per dolum incensores[uel]uineārum oliuarumue aut in metallum humiliores damnantur aut honestiores in insulam relegantur.

XII. 4, 1 Idem Paulus libro et titulo qui supra:

Incendia, si qui in oppido praedandi causa faciunt, facile capite puniuntur.

XII. 5, 1 Ulpianus libro octauo de officio proconsulis [sub titulo] de naufragis et incendiariis:

Incendiariis lex quidem Cornelia aqua et igni interdici iussit, sed re uarie sunt puniti. nam qui data opera in ciuitate incendium fecerunt, si humillimo loco sunt, bestiis subici solent, si in aliquo gradu et Romae id fecerunt, capite puniuntur: aut certe
2 [deportationis poena]adficiendi sunt qui haec committunt. sed eis qui non data opera incendium fecerint plerumque ignoscitur, nisi in lata et incauta neglegentia uel lasciuia fuit.

XII. 6, 1 Paulus libro singulari de poenis paganorum sub titulo de abigeis dicit:

Incendia, si qui in oppido praedae causa admiserint, capite puniuntur: qui casu insulam aut uillam, non ex inimicitiis incenderint, leuius. fortuita enim incendia ad forum remittenda sunt, ut damnum uicinis sarciatur.

XII. 7, 1 Ulpianus libro XVIII ad edictum, sub titulo si fatebitur iniuria occisum esse, in simplum et cum diceret:

Item si insulam meam adusseris uel incenderis, Aquiliae actionem habebo, idemque est, et si arbustum meum uel uillam

c. 3 = *Paulus* (*Vesont.*) v. 20, 4, 5. c. 4 = *Paulus* (*Vesont.*) v. 20, 1.
c. 7 = *Dig.* ix. 2, 27, 7 *varied*.

Line 3. [*uel*], with Huschke.

Line 7. *Incendia si qui*, with Huschke. Mommsen, following the MSS., reads *incendiarii qui quid*.

Lines 12-14. *Qui data.....aut certe*. This passage is found with some variations in *Digest* xlvii. 9, *l.* 12, § 1.

Line 15. [*Deportationis poena.*] The above passage from the *Digest* concludes *insulam deportantur*. I have, therefore, adopted Blume's suggestion to fill up the *lacuna* in the MSS., after *certe* and before *adficiendi*.

Lines 15-17. *Sed.....fuit*. Cp. *Digest* xlvii. 9, *l.* 11.

Line 19. *Abigeis*, evidently a mistake through thoughtless copying of the inscription to Title xi. 6, § 1. It should be *incendiariis*.

Line 20. *Incendia si qui*, with Huschke. Mommsen reads with the MSS., *incendiarii qui*, and *id* before *admiserint*.

Lines 20-23. Cp. above in this title chaps. 2 and 5; also *Digest* xlvii. 9, *l.* 9.

Line 22. *Ad forum remittenda*. Cp. above Title vii., chap. 4, § 1, and Title, xi chaps. 4 and 6.

Line 24. *Si fatebitur*. Cp. *Digest* ix. 2, *l.* 26.

The same Paulus, in the same Book and Title:

Damage caused by slaves may, at the master's discretion, be compensated by their noxal surrender.

Those who maliciously set fire to crops, vines or olive-trees are, if they are of lower rank, sentenced to the mines; if of the better classes, to deportation to an island.

The same Paulus, in the same Book and Title as above:

Those who commit arson in a town for the purpose of plunder are, without hesitation, sentenced to death.

Ulpian, in the Eighth Book of the Proconsular Functions, [under the Title] "Of Shipwrecked Persons and Incendiaries":

The Lex Cornelia ordered incendiaries to be interdicted from fire and water. In actual practice, however, the punishments are differentiated; for those who have deliberately caused a fire in a city are, if of the lower classes, thrown to the wild beasts; if they are of some standing and committed the offence at Rome, they suffer capital punishment, or, at least, deportation is inflicted on the perpetrators of such crimes.

But those who have caused a fire unintentionally, are generally pardoned unless there was gross and careless negligence or wantonness.

Paulus, in his Single Book "Concerning the Punishment of Peasants," under the Title "Of Cattle-raiders," says:

Persons who have committed arson in a town for the sake of plunder suffer capital punishment. But those who have set fire to a tenement-house or country seat accidentally, and not out of malice, are dealt with more leniently. Cases of accidental conflagration are to be sent to the Civil Court, so that damage caused to the neighbours should be made good.

Ulpian, in the Eighteenth Book of his Commentary on the Edict, under the Title, "If he will admit that the death was wrongfully caused, the claim should be for simple damages," and when he said:

If you have damaged my tenement-house by fire, or set it on fire, I shall have an Aquilian action. This also applies (if you have damaged) my shrubbery or country seat.

Page 116, line 25. *Et cum diceret.* See above, Title ii., chap. 4, § 1. Mommsen explains it to mean that only the pertinent portion of the passage is quoted by the Collatio This would be analogous to the statement below, Title, xv., 2, § 4, *Cuius rescripti uerba quia multa sunt de fine eius ad locum haec pauca subiecí.* Huschke prefers the emendation *ut condiceret*, which would be part of the quotation from Ulpian.

XII. 7, 2 meam. quod si dolo quis insulam exusserit, etiam capitis poena plectitur, quasi incendiarius.

3 Item si quis insulam uoluerit exurere et ignis etiam ad uicini insulam peruenerit, Aquilia tenebitur lege uicino etiam, non minus inquilinis ob res eorum exustas, et ita Labeo libro XV responsorum refert.

4 Sed si stipulam in agro tuo incenderis ignisque euagatus ad praedium uicini peruenerit et illud exusserit, Aquilia lex locum habeat an in factum actio sit, fuit quaestio.

5 Sed plerisque Aquilia lex locum habere non uidetur, et ita Celsus libro XXXVII digestorum scribit. ait enim 'si stipulam incendentis ignis effugit, Aquilia lege eum non teneri, sed in factum agendum, quia non principaliter hic exussit, sed dum aliud egit, sic ignis processit.'

6 Cuius sententia et rescripto diui Seueri conprobata est in haec uerba: 'profitere propter ignem, [qui] pabuli gratia factus culpa seruorum Veturiae Astiliae euagatus agrum tuum, ut proponis, depopulatus est, ad exemplum legis Aquiliae noxali iudicio actura: si litis aestimatio permittitur, iudicium consistere potest.' uidelicet non est uisa Aquilia sufficere.

7 Si fornacarius seruusue aedium conductoris coloniue ad fornacem obdormisset et uilla fuerit exusta, Neratius scribit ex locato conuentum praestare debere, si neglegens in elegendis ministeriis fuit. ceterum si alius ignem subiecerit fornaci, alius neglegenter custodierit, [an] tenetur? namque qui non custodit, nihil fecit: qui recte ignem subiecit, non peccauit: quemadmodum si hominem medicus recte secuerit, sed neglegenter uel ipse uel alius curauerit, Aquilia cessat. quid ergo est? et hic puto ad exemplum Aquiliae dandam actionem tam in eum, qui ad fornacem obdormiuit uel neglegenter custodit, quam in medicum qui neglegenter curauit, siue homo periit siue debilitatus est.

c. 7, 3. si quis — exustas = *Dig.* ix. 2, 27, 8.

c. 7, 7 = *Dig.* ix. 2, 27, 9, *with some omissions.*

Line 21. *Si fornacarius seruusue aedium conductoris coloniue,* with Huschke. Mommsen reads *Si forte seruus, qui idem conductor est coloni.*

Lines 26-28. *Quemadmodum.....cessat.* Cp. *Digest* ix. 2, 27, *pr.*

But if anyone has maliciously burnt down a tenement-house, he is even capitally punished as an incendiary.

If anyone has attempted to burn down a tenement-house, and the fire has reached his neighbour's tenement, he will be liable to his neighbour under the Lex Aquilia (for damage to the house), and not less so to the tenants for their property lost by fire. And thus Labeo reports in the Fifteenth Book of his Responses.

But if you had been burning stubble in your field, and the fire spread and reached your neighbour's property and burnt it, it was a moot point whether an action would lie under the Lex Aquilia, or whether it was necessary to have an action on the case. Most authorities hold that the Lex Aquilia does not here apply, and so Celsus writes in the Thirty-seventh Book of his Digests. His words are: "If, in burning stubble, the fire escapes, the defendant is not liable under the Lex Aquilia, but an action on the case will lie, since he did not cause the conflagration directly, but the fire spread while his attention was otherwise engaged."

His opinion is also approved in a rescript of the late Emperor Severus in the following terms: "You propose suing in a noxal action, framed after the formula of the Lex Aquilia, for damages caused by a fire lit for the purpose of preparing food, which spread through the fault of Veturia Astilia's slaves, and, as you say, laid waste your field. Lay an information: the trial can take place when the amount of the claim has been admitted." Obviously the Aquilian Action was not deemed sufficient to meet the case.

If a kiln-keeper or a house-slave belonging either to the hirer of a kiln or a tenant had fallen asleep at the kiln and a country seat has been burnt down, Neratius writes that if sued in an action of hire, the hirer or tenant will have to make good the loss if he was actually negligent in the choice of his servants. But if one lit the furnace, and another watched the fire carelessly, is he liable? The one who did not watch, did nothing; the one who properly kindled the fire was not in fault; just as when a surgeon competently operated on a man but either the operator himself or another person was negligent in the after treatment, the Aquilian Action will not lie. What then is the practical conclusion? Here, I think, an action framed on the Lex Aquilia should be given against the man who fell asleep at the kiln, or kept watch negligently, just as it is given against the practitioner who treated the patient negligently, whether the latter died or was disabled. It is no defence that the

Nec quisquam dixerit in eo qui obdormiuit rem eum humanam et naturalem passum, cum deberet uel ignem extinguere uel ita
XII. 7, 8 munire, ut non euagaretur. item libro VI ex Vibiano relatum est: si furnum secundum parietem communem haberes, an damni iniuria teneris? et ait [Proculus] agi non posse Aquilia lege, quia nec cum eo qui focum haberet: et ideo aequius putat in factum actionem dandam. sed non proponit exustum parietem. sane enim quaeri potest, [si] nondum mihi damnum dederis et ita ignem habeas, ut metuam ne mihi des, an aequum sit me interim actionem, id est in factum inpetrare? fortassis enim de hoc senserit Proculus.
9 nisi quis dixerit damni non facti sufficere cautionem. sed et si qui serui inquilini insulam exusserint, libro X Vrseius refert Sabinum respondisse lege Aquilia seruorum nomine dominum noxali iudicio conueniendum: ex locato autem dominum teneri negat. Proculus autem respondit, cum coloni serui uillam exusserint, colonum uel ex locato uel lege Aquilia teneri, ita ut colonus seruos posset noxae dedere et si uno iudicio res esset
10 iudicata, altero amplius non agendum. item Celsus libro XXVII digestorum scribit: si, cum apes meae ad tuas aduolassent, tu eas exusseris, quosdam negare conpetere legis Aquiliae actionem, inter quos et Proculum, quasi apes domini mei non fuerint. sed id falsum esse Celsus ait, cum apes reuenire soleant et fructui mihi sint. sed Proculus eo mouetur, quod nec mansuetae nec ita clausae fuerint. ipse autem Celsus ait nihil inter has et columbas interesse, quae, si manum refugiunt, domi tamen fugiunt.

(TITVLVS XIII.)

DE TERMINO AMOTO.

XIII. 1, 1 Moyses dicit:

Non transmouebis terminos proximi tui, quos constituerunt patres tui uel principes possessionis tuae.

c. 7, 8 = *Dig.*, ix. 2, 27, 10, *with some omissions.*
c. 7, 9. Proculus — agendum = *Dig.* ix. 2, 27, 11, *with some omissions.*
c. 7, 10. si cum — exusseris = *Dig.* ix. 2, 27, 12.

Line 18. *Agendum.* The *Digest* continues after *agendum* thus: ***Sed haec ita, si culpa colonus careret; ceterum si noxios seruos habuisset, damni eum iniuria teneri. cur tales habuerit. Idem seruandum et circa inquilinorum insulae personas scribit. Quae sententia habet rationem.***

Line 25. *Domi tamen fugiunt.* Huschke has *domitae tamen fugiunt:* Though they escape from the hand, they escape as domesticated birds. Mommsen's *domi* ought, perhaps to be *domum.*

Lines 29-30. Deut. xix. 14: Thou shalt not remove thy neighbour's landmark, which they of old time have set in thine inheritance, which thou shalt inherit in the land that the Lord thy God giveth thee to possess it. Cp. Deut. xxvii. 17.

sleeper was overcome by a weakness inherent in human nature since it was his bounden duty either to have extinguished the fire or taken the requisite precautions to prevent it spreading.

The following case is likewise cited in the Sixth Book from Vibianus. If you should have a bake-house next to a party-wall would you be liable in an action for unlawful damages? [Proculus] says: An action will not lie under the Lex Aquilia, seeing that the owner of an ordinary stove cannot be sued. He accordingly thinks it fair that an action on the case be granted. But he does not deal with the event of the wall being burnt down. The question may indeed be put: You have not yet occasioned me actual damage, but the fire on your premises is such as to cause me to apprehend damage; is it right that I obtain in the interim an action, that is, on the case? Possibly, Proculus had such a situation in mind, unless it be argued that, where damage is apprehended, the giving of security would be sufficient.

Moreover, where a tenant's servants have burnt down a tenement house, Urseius, in his Tenth Book, quotes a response of Sabinus that the master may be sued under the Lex Aquilia in a noxal action to answer for his slaves, but says the master cannot be sued in an action of hire.

Proculus, however, gave a response that when a tenant farmer's slaves burn down a country mansion, he can be sued either in an action of hire or under the Lex Aquilia, but may discharge the claim by a noxal surrender of the slave; and once the claim has been judicially determined, no further action can be brought.

Celsus, in the Twenty-seventh Book of his Digests, writes: If my bees swarmed with yours and you burnt them, some jurists, among them Paulus, say that no action under the Lex Aquilia will lie, on the ground that the bees at the time were not in my ownership. "This," says Celsus, "is wrong, since bees usually return to their hives and are a source of profit to me." Proculus was influenced by the consideration that bees are neither domesticated, nor kept shut up. The answer of Celsus is that there is no difference between them and pigeons, which, though they escape from the hand, nevertheless fly home.

THIRTEENTH TITLE.

"OF REMOVING BOUNDARY MARKS."

Moses says:

Thou shalt not remove thy neighbour's boundary marks,

XIII. 2, 1 Paulus libro sententiarum [primo] sub titulo finium regundorum:

In eum, qui per uim terminos deiecit uel amouit, extra ordinem anima aduertitur.

XIII. 3, 1 Ulpianus libro octauo de officio proconsulis sub titulo de termino moto:

Eos qui terminos mouerunt non inpune id facere debere
a. 119 diuus Hadrianus Terentio Gentiano XVII k. Sept. se III consule
2 rescripsit, quo rescripto poenam uariam statuit. uerba rescripti ita se habent: 'pessimum factum eorum, qui terminos finium causa positos abstulerunt, dubitari non potest. poenae tamen modus ex condicione personae et mente facientis magis statui potest: nam si splendidiores sunt personae, quae conuincuntur, non dubito quin occupandorum aliorum finium causa id admiserint, et possunt in tempus, ut cuiusque patitur aetas, relegari [id est si iuuenior in longius, si senior recisius: si uero alii negotium gesserunt et ministerio functi sunt, castigari] et sic in biennium aut triennium ad opus publicum dari. quod si per ignorantiam aut fortuito lapides usus causa furati sunt, sufficit eos uerberibus coerceri.'

(TITVLVS XIIII.)

DE PLAGIARIIS.

XIV. 1, 1 Moyses dicit: Quicumque plagiauerit quemquam Israhel et uendiderit eum, morte moriatur.

XIV. 2, 1 Paulus libro sententiarum V sub titulo ad legem Fabiam:

Lege Fabia tenetur, qui ciuem Romanum ingenuum liber-
tinumue seruumue alienum celauerit uendiderit uinxerit com-
2 parauerit. et olim quidem huius legis poena nummaria fuit, sed translata est cognitio in praefectum urbis, itemque praesidis

c. 2 = *Paulus* i, 16. c. 3, 2. *This rescript is quoted by Callistratus, Dig.* xlvii. 21, 2: Title xiv. c. 2. *From this passage Paulus* v., 30*b is restored.*

Lines 3-4. *Extra ordinem*; trial by magistrates without reference to *iudices*, the case being criminal and not to be met by pecuniary penalties. Cp. *Digest* xlvii. 21, *l.* 1, and *ibid. l.* 3, § 2, *fin.*

Lines 22-23. Exod. xxi. 16: And he that stealeth a man, and selleth him, or if he be found in his hand, he shall surely be put to death.

Deut. xxiv. 7; If a man be found stealing any of his brethren of the children of Israel, and maketh merchandise of him, or selleth him; then that thief shall die; and thou shalt put evil away from among you.

Lines 25-27. *Lege Fabia.....comparauerit.* Cp. Paulus v. 6, § 14; *Digest* xlviii. 15, *l.* 1, and *ibid., l.* 6, § 2; Justinian's Code, ix. 20, *l.* 9 and 15. See also below in this title, chap. 3 §§ 4 and 5.

Line 27—page 124, line 3. *Et olim.....relegantur.* Paulus v. 6, § 14 and *Digest* xlviii. 15, *l.* 7.

Line 28. *Translata est cognitio in praefectum urbis.* See below chap. iii., § 2. So also the inscription in Justinian's Code ix. 20, *l.* 7, referring to a case coming under this law, reads: *Iidem A. A. Maximo Pf. U.* (= *Praefecto urbis*).

Cognitio. After this word Huschke supplies (*in Italia*).

which thy fathers or the chiefs of thy possession have set up.

Paulus, in the First Book of The Sentences, under the title "Of Adjustment of Boundaries":

The forcible throwing down or removal of boundary marks is dealt with by the Praetor, in his extraordinary jurisdiction.

Ulpian, in the Eighth Book of the Proconsular Functions, under the title "The Removal of Boundary Marks":

The Emperor Hadrian sent, on the 16th of August, [in the third year of his Consulship,] a rescript to Terentius Gentianus, that removers of landmarks should not be suffered to go unpunished. In this rescript he fixed varying penalties.

The terms of the Rescript are as follows: Removal of landmarks, which are set up to indicate boundaries, is undoubtedly a most wicked act. The punishment to be awarded, however, is determined by the status of the offender and his motive. If those convicted be persons of rank, I do not doubt that their purpose was to appropriate lands belonging to others. They may be deported for terms proportionate to their age [that is, the younger offender for a longer period; the older for a shorter one. If others have performed the actual removal in obedience to orders, they are to be whipped] and sent for two or three years to the public works. But if they have stolen the stones in order to use them, not knowing that they were landmarks, or thoughtlessly, a flogging is sufficient punishment.

FOURTEENTH TITLE.

"OF KIDNAPPERS."

Moses says:

Whosoever stealeth anyone in Israel and selleth him, let him surely die.

Paulus, in the Fifth Book of The Sentences, under the title "On the Lex Fabia":

Whosoever has concealed, sold, imprisoned, placed in bonds, or acquired a free-born Roman citizen, freedman, or another man's slave, is liable under the Lex Fabia.

The penalty under this law was formerly monetary; the offence has, however, been transferred to the jurisdiction of the Urban Prefect and the extraordinary jurisdiction of the President of the Province; and offenders belonging to the lower

prouinciae extra ordinem meruit animaduersionem. ideoque humiliores aut in metallum dantur aut in crucem tolluntur, honestiores adempta dimidia parte bonorum in perpetuum relegantur.

XIV. 2, 3 si seruus sciente domino alienum seruum subtraxerit uendiderit celauerit, in ipsum dominum animaduertitur: quod si id domino ignorante commiserit, in metallum datur.

XIV. 3, 1 Ulpianus libro nono de officio proconsulis sub titulo ad legem Fabiam:

Frequens est etiam legis Fabiae cognitio in tribunalibus praesidum, quamquam quidam procuratores Caesaris usurpauerint

2 tam in prouinciis quam Romae. sed enim iam eo peruentum est constitutionibus, ut Romae quidem praefectus urbis solus super ea re cognoscat, si intra miliarium centesimum sit iniuria commissa: enimuero si ultra centesimum, praefectorum praetorio erit cognitio. in prouincia est praesidum prouinciarum, nec aliter procuratori Caesaris haec cognitio iniungitur, quam si praesidis partibus in prouincia fungatur. plane post sententiam de Fabia latam procuratoris partes succedunt huiusce rei. attamen procurator qui nullam prouinciam regit licet de capitalibus causis cognoscere nec soleat, tamen ut de lege Fabia possit cognoscere, imp. Antoninus constituit. idem legis Iuliae de adulteris coercendis constitutione imperatoris Antonini quaestionem accepit. lege autem Fabia tenetur, qui ciuem Romanum eumue, qui in Italia liberatus sit, celauerit uinxerit uinctumue habuerit, uendiderit emerit, quiue in eam rem socius fuerit: cui capite primo eiusdem legis poena iniungitur. si seruus quis sciente domino fecerit, dominus eius sestertiis quinquaginta

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Line 13. *Iniuria*, Huschke omits as superfluous after *ea re* in the previous line. Possibly *iniuria* here means offence. Huschke, instead of *iniuria commissa*, has *in Fabiam commissum*. *In Fabiam* also seems superfluous.

Lines 15-17. *In prouincia.....fungatur*. Cp. Justinian's Code ix. 20, *l.* 4; *ibid.* ix, 47, *l.* 2; *ibid.* iii., 26, *l.* 3; *Digest* 1, 19, *l.* 3 *pr.*

Lines 18-20. *Huiusce rei.....soleat*. Huschke reads *Uice praesidis tamen procurator, qui illam prouinciam regit, licet de capitalibus causis cognoscere (nequeat) nec soleat:* "Though the Procurator who governs that province on behalf of the President cannot, and usually does not, exercise jurisdiction in capital charges." Huschke adds *nequeat*, on the ground that those belonging to the upper classes could decline the jurisdiction of the Procurator by appealing to the Emperor (see Acts of the Apostles, xxv. 9 and 10). He justifies his reading of the passage on the ground that a Procurator could not be said *regere prouinciam*, unless he acts on behalf of the *praeses prouinciae*, and during his absence. He also quotes *Digest* xxxix. 4, *l.* 16, § 1, to the effect that Procurators could not even judge a slave charged under the *Lex Julia de Adulteriis;* while here they are said to have jurisdiction in such cases, even against free men.

Lines 23-26. *Lege.....fuerit*. Cp. above in this title, chap. 2, § 1.

Line 23. *Ciuem Romanum*. Huschke adds (*Latinum, Italicum, ingenuum*), and suspects that above (page 122, line 25), after *ciuem Romanum*, the word *Latinum* has fallen

classes are therefore sent to the mines or crucified; those of honourable rank are deprived of half their property and deported for life.

If a slave steal, sell, or hide the slave of another master, with his own master's knowledge, the latter is punished. But if the master is ignorant of the act, the slave is sent to the mines.

Ulpian, in the Ninth Book of The Proconsular Functions, under the title "On the Lex Fabia":

Cases under the Lex Fabia are commonly taken in the President's Courts, though some of the Imperial Procurators, both at Rome and in the Provinces, have arrogated the jurisdiction to themselves. This practice has, under the Constitutions, gone so far that the City Prefect alone takes cognisance of the matter if the offence has been committed within one hundred miles of the City. Outside this limit, the jurisdiction belongs, of course, to the Prætorian Prefect; in the provinces it belongs to the Presidents of the Provinces, and is only vested in the Imperial procurator when he acts there as substitute for the President. Clearly, after a sentence under the Lex Fabia has been pronounced, the Procurator's functions follow.

Nevertheless, a Procurator, who is not governing a province, though usually without jurisdiction in capital charges, has been empowered by a constitution of the Emperor Antoninus to try offences under the Lex Fabia. And enquiries into cases under the Lex Julia for checking adulteries have, by virtue of a constitution issued by the Emperor Antoninus, likewise devolved upon this official.

The Lex Fabia is directed against anyone who hides, binds, holds bound, sells or buys a Roman citizen, or any one emancipated in Italy, as well as against an accomplice to these offences; the penalty is fixed in the first chapter of this statute. If a slave commit the offence with the knowledge of his master, the same chapter provides that the latter be fined 50,000 sesterces.

Page 124 (*cont.*) out. This is not necessary. At the time when the *Lex Fabia* was passed, it applied to all free men and freed men in Italy, and was afterwards extended to the provinces. The *Latini* should therefore, also have been named. But in Ulpian's days there were no longer *Latini* except *Libertini* and *dediticii*, hence their omission as a separate class (Mommsen *in loco*).

Line 26. *Iniungitur.* Huschke adds (*sestertium C milium*); Mommsen thinks that it was deliberately omitted as obsolete.

Line 26—page 126, line 1. *Si seruus.....punitur.* Cp. *Digest* xl. 1, *l.* 12.

XIV. 3, 5 milibus eodem capite punitur. eiusdem legis capite secundo tenetur, qui alieno seruo persuaserit, ut dominum fugiat quiue alienum seruum inuito domino celauerit uendiderit emerit dolo malo, quiue in ea re socius fuerit: iubeturque populo sestertia quinquaginta milia dare. et reliqua.

6 Sciendum tamen est ex nouellis constitutionibus capitali sententia plagiatores pro atrocitate facti puniendos: quamuis et Paulus relatis supra speciebus crucis et metalli huiusmodi reis inrogauerit poenam.

(TITVLVS XV.)

XV. 1, 1 ## DE MATHEMATICIS, MALEFICIS ET MANICHAEIS.

Moyses dicit:

Non inueniatur in te qui lustret filium tuum aut filiam tuam, nec diuinus apud quem sortes tollas: nec consentias uenenariis inpostoribus, qui dicunt, quid conceptum habeat mulier, quoniam fabulae seductoriae sunt. nec intendas prodigia, nec interroges 2 mortuos. (non inueniatur in te auguriator nec inspector auium nec maleficus aut incantator nec pythonem habens in uentrem nec haruspex nec interrogator mortuorum nec portenta in- 3 spiciens): omnia namque ista a domino deo tuo damnata sunt et qui fecerit haec. propter has enim abominationes deus 4 eradicabit Chaldaeos a facie tua. tu autem perfectus eris ante 5 dominum deum tuum: gentes enim istae, quas tu possides, auguria et sortes et diuinationes audiebant.

Lines 1-5. *Eiusdem.....dare.* Cp. *Digest* xi. 4, *l.* 1, § 2, and also *Digest* xlviii. 15.

Line 6. *Nouellis constitutionibus.* Cp. Justinian's Code, ix. 20, *ll.* 7 and 16. The former constitution (*l.* 7) is by the Emperors Diocletian and Maximian (287 C.E.); the second (*l.* 16) is by Constantine (315 C.E.). Cp. also Theodosian Code, ix. 18.

Lines 13-24. Deut. xviii. 10-14: There shall not be found among you anyone that maketh his son or his daughter to pass through the fire,[a] or that useth divination, or an observer of times,[c] or an enchanter,[d] or a witch,[e] or a charmer,[f] or a consulter with familiar spirits,[g] or a wizard,[h] or a necromancer.

For all that do these things are an abomination unto the Lord: and because of these abominations the Lord thy God doth drive them out before thee.

Thou shalt be perfect with the Lord thy God.

For these nations, which thou shalt possess, hearkened unto observers of times, and unto diviners: but as for thee, the Lord thy God hath not suffered thee so *to do*.

The Hebrew original for the last word in verse 10, rendered "witch," is masculine, and means "wizard."

The traditional Jewish interpretation of—

[a] = A worshipper of Moloch.

[b] = One who stakes events on a chance.

[c] = An observer of times, or, according to one view, a prestidigitateur.

The second chapter of this law is directed against anyone who persuades another man's slave to run away from his master or, against the master's wish, hides, sells or fraudulently buys a slave, or abets such offences. He is ordered to pay 50,000 sesterces to the public treasury, etc.

It must, however, be noted that, according to recent constitutions, kidnappers are to be capitally punished, as befits the heinousness of the crime, though Paulus, indeed, in the passage cited above, also says that criminals of this type should be sentenced to crucifixion or the mines.

TITLE XV.

OF ASTROLOGERS, SORCERERS AND MANICHAEANS.

Moses says:

Let there not be found in thee any one who purgeth thy son or daughter (by fire), nor a diviner with whom thou castest lots; nor shalt thou countenance makers of poisons, imposters who say what it is that a woman has conceived, since these are misleading tales. Nor shalt thou give heed to prodigies, nor enquire of the dead.

Let there not be found in thee an augur, nor examiner of birds, nor sorcerer, nor enchanter, nor one that has a snake in his belly, nor a soothsayer, nor an enquirer of the dead, nor a watcher of portents.

For all these things as well as the doer of them are condemned by the Lord, thy God. For because of these abominations God will uproot the Canaanites from before thee.

But thou shall be perfect before the Lord thy God.

For those nations which thou wilt possess listened to auguries, lots and divinations.

PAGE 126 *(cont.)* [d] = A superstitious man; *e.g.*, who refuses to go on a journey because his bread fell out of his hands, or a stag crossed his path.

[e] = Wizard.

[f] = A snake-charmer, who collects snakes into one place.

[g] = A wizard, called *pithom=pytho*, who speaks from his armpit.

[h] = One who puts the bone, called *Jaddua*, into his mouth, and the bone speaks.

The Collatio mostly follows the Septuagint, but translates the terms in accordance with the superstitions of the times.

Line 15. *Quid conceptum habeat, i.e.*, whether the foetus is that of a male or female child.

Line 17. *Auguriator* = observer of the flight of birds. *Inspector auium* = examiner of the entrails of birds.

XV. 2, 1 Ulpianus libro VII de officio proconsulis sub titulo de mathematicis et uaticinatoribus:

Praeterea interdictum est mathematicorum callida inpostura et obstinata persuasione. nec hodie primum interdici eis placuit, sed uetus haec prohibitio est: denique extat senatus consultum
a 17 Pomponio et Rufo conss. factum, quo cauetur, ut mathematicis Chaldaeis ariolis et ceteris, qui simile inceptum fecerunt, aqua et igni interdicatur omniaque bona eorum publicentur, et si externarum gentium quis id fecerit, ut in eum animaduertatur.
2 sed fuit quaesitum, utrum scientia huiusmodi hominum puniatur an exercitio et professio. [et] quidem apud ueteres dicebatur professionem eorum, non notitiam esse prohibitam: postea uariatum. nec dissimulandum est nonnumquam inrepsisse in usum, ut etiam profiterentur et publice se praeberent. quod quidem magis per contumaciam et temeritatem eorum factum est, qui uisi erant uel consulere uel exercere, quam quod fuerat
3 permissum. saepissime denique interdictum est fere ab omnibus principibus, ne quis omnino huiusmodi ineptiis se inmisceret, et uarie puniti sunt ii qui id exercuerint, pro mensura scilicet consultationis. nam qui de principis salute, capite puniti sunt uel qua alia poena grauiore adfecti: enimuero si qui de sua suorumque, leuius. inter hos habentur uaticinatores, quamquam ii quoque plectendi sunt, quoniam nonnumquam contra publicam quietem imperiumque populi Romani inprobandas artes exercent.
4 extat denique decretum diui Pii ad Pacatum legatum prouinciae Lugudunensis, cuius rescripti uerba quia multa sunt, de fine eius
5 ad locum haec pauca subieci. denique diuus Marcus eum, qui motu Cassiano uaticinatus erat et multa quasi instinctu deorum
6 dixerat, in insulam Syrum relegauit. et sane non debent inpune ferre huiusmodi homines, qui sub obtentu ex monitu deorum quaedam uel enuntiant uel iactant uel scientes confingunt.

Line 4. *Et obstinata persuasione.* Huschke has instead, *et opinatae artis persuasio*: "and the attempts to persuade people of the truth of their pretended art."

Line 5-9. *Denique.....animaduertatur.* The date of this *Senatus-consultum* according to Tacitus (Annals ii. 32) was the year 17 C.E.; according to Dio (lvii. 15) the year 16 C.E.

Lines 10-11. *Sed fuit.....professio.* Cp. Paulus, v. 21, § 4, *ibid.*, v. 23, § 18, and Theodosian Code, ix. 16, *ll.* 3 and 8, which forbid the learning or teaching of these arts.

Lines 17-20. *Saepissime.....consultationis.* Cp. Paulus v., 21, § 3.

Line 25. *Decretum.* The Emperor's decision on a legal point referred to him in his appellate jurisdiction.

Line 27. *Subieci.* Schulting thinks that the quotation referred to has dropped out. Huschke takes paragraph 6, lines 29-31 as the quotation which should come before paragraph 5. This seems plausible.

Line 27. *Marcus, i.e.*, Marcus Aurelius.

Line 28. *Motu Cassiano*, in the year 175, C. E. Cp. Justinian's Code ix. 8, *l.* 7 *pr.*

Ulpian, in the Seventh Book of The Proconsular Functions, under the title of "Astrologers and Soothsayers":

Moreover, a ban has been put upon the crafty imposture and persistent persuasions of the astrologers. Nor has this been forbidden them to-day for the first time; the prohibition is of long standing. In fact, a *Senatus-consultum*, passed in the Consulship of Pomponius and Rufus, is extant, which provides that astrologers, Chaldeans, soothsayers, and others who engage in the like practices, be interdicted from fire and water, and all their property confiscated, and if the offender be a foreigner, he shall be punished with death.

It was a moot point whether the knowledge or the exercise and practice of this art is punished. The ancient authorities indeed said that practice and not mere knowledge was forbidden; this view afterwards changed.

We must not hide from ourselves that there have been times when these arts so crept into use that they were even publicly practised and advertised. But this was due to the contumacy and audacity of those who had been observed to have had recourse to or practised the arts, rather than to any legal sanction.

Nearly all the Emperors have indeed, time after time, issued interdicts which forbid meddling with such meaningless things, and those practising them were punished in accordance with the character of the consultation. If the Emperor's health was the subject of the consultation, death or other severe punishment was inflicted; the penalty was lighter where the enquiry concerned the consulter's own health or that of his relatives. This last class also includes soothsayers, though they, too, must be punished, because they sometimes exercise their reprehensible arts to the prejudice of the public peace and the Roman Empire.

Finally, there is extant a decree of the late Emperor Antoninus Pius, to Pacatus, Lieutenant-General of the Province of Lyons; and the rescript being rather long, I have quoted these few, relevant words.

And indeed, the Emperor Marcus deported to the island of Syrus one who, in the sedition of Cassius, played the soothsayer, and made many statements as though under divine inspiration.

And surely we ought not to allow men of this character to go unpunished, who, pretending that they have divine messages, make or circulate announcements, or feign that others have this knowledge.

XV 3, 1 Gregorianus libro VII sub titulo de maleficis et Manichaeis:

Impp. Diocletianus et Maximianus AA. [et Constantius] et Maximianus nobilissimi [CC.] Iuliano proconsuli Africae. Otia maxima interdum homines incommodioris condicionis naturae humanae modum excedere hortantur et quaedam genera inanissima ac turpissima doctrinae superstitionis inducere suadent, ut sui erroris arbitrio pertrahere et alios multos uideantur, Iuliane
2 karissime. sed dii inmortales prouidentia sua ordinare et disponere dignati sunt, quae bona et uera sunt ut multorum et bonorum et egregiorum uirorum et sapientissimorum consilio et tractatu inlibata probarentur et statuerentur, quibus nec obuiam ire nec resistere fas est, neque reprehendi a noua uetus religio deberet. maximi enim criminis est retractare quae semel ab antiquis statuta et definita suum statum et cursum tenent ac
3 possident. unde pertinaciam prauae mentis nequissimorum hominum punire ingens nobis studium est: hi enim, qui nouellas et inauditas sectas ueterioribus religionibus obponunt, ut pro arbitrio suo prauo excludant quae diuinitus concessa sunt quon-
4 dam nobis, de quibus sollertia tua serenitati nostrae retulit, Manichaei, audiuimus eos nuperrime ueluti noua [et] inopinata prodigia in hunc mundum de Persica aduersaria nobis gente progressa uel orta esse et multa facinora ibi committere, populos namque quietos perturbare nec non et ciuitatibus maxima detrimenta inserere: et uerendum est, ne forte, ut fieri adsolet, accedenti tempore conentur [per] execrandas consuetudines et scaeuas leges Persarum innocentioris naturae homines, Romanam gentem modestam atque tranquillam et uniuersum orbem nos-
5 trum ueluti uenenis de suis maliuolis inficere. et quia omnia, quae pandit prudentia tua in relatione religionis illorum, genera maleficiorum statutis euidentissime sunt exquisita et inuenta commenta, ideo aerumnas atque poenas debitas et condignas illis

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Line 1. *Libro vii.* Thus the Berlin Codex. The Vercelli MS. has *vi.*; Schulting has *libro viiii.*; Haenel's edition of the Gregorian Code, p. 44, gives it as *lib. xiv., title iv.*

Line 5. *Incommodioris.* Mommsen has *in communione*, following the MSS. This reading, however, gives no sense.

Line 7. *Superstitionis.* Huschke has *superstitiosis* "and persuades superstitious people to bring in empty and scandalous doctrines." Huschke, on the authority of Suetonius, Julian 88, *decernentium ore*, supplies *ore* after *uirorum*, and contrasts *ore multorum* with *consilio sapientissimorum*.

Line 20. *De quibus.* Huschke begins with these words a new sentence.

Line 21. *Manichaei.* Huschke writes *Manichaeos*; Haenel, *Manichaeis*.

Lines 30-31. *Genera maleficiorum statutis euidentissime sunt exquisita et inuenta commenta.* Huschke has instead, *genera maleficiorum statuunt euidentissi-*

Gregorian, in the Seventh Book, under the title "Of Sorcerers and Manichaeans":

The Emperors Diocletian and Maximian [and Constantius] and Maximian to Julian, Proconsul of Africa: Well-beloved Julian: Excessive leisure sometimes incites ill-conditioned people to transgress the limits of nature, and persuades them to introduce empty and scandalous kinds of superstitious doctrine, so that many others are lured on to acknowledge the authority of their erroneous notions.

But the immortal Gods, in their Providence, have thought fit to ordain that the principles of virtue and truth should, by the counsel and deliberations of many good, great and wise men, be approved and established in their integrity. These principles it is not right to oppose or resist, nor ought the ancient religion to be subjected to the censure of a new creed. It is indeed highly criminal to discuss doctrines once and for all settled and defined by our forefathers, and which have their recognized place and course in our system. Wherefore we are resolutely determined to punish the stubborn depravity of these worthless people.

As regards the Manichaeans, concerning whom you have reported to us, who, in opposition to the older creeds, set up new and unheard-of sects, purposing in their wickedness, to cast out the doctrines vouchsafed to us by Divine favour in olden times, we have heard that they have but recently advanced or sprung forth, like strange and monstrous portents, from their native homes among the Persians—a nation hostile to us—and have settled in this part of the world, where they are perpetrating many evil deeds, disturbing the tranquillity of the peoples and causing the gravest injuries to the commonalties; and there is danger that, in process of time, they will endeavour, as is their usual practice, to infect the innocent, orderly and tranquil Roman people, as well as the whole of our Empire, with the damnable customs and perverse laws of the Persians as with the poison of a malignant serpent. And since all that your wisdom has set out in detail in your report of their religion shows that what our laws regard as

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(Page 130 *cont.*)

morum, exquisita arte adinuenta (ac) commenta. The meaning is: "And since all the things which your wisdom has discovered in the religion of those people consist of classes of crimes of the clearest character, invented and contrived with consummate skill."

XV. 3. 6 statuimus. iubemus namque auctores quidem ac principes una cum abominandis scripturis eorum seueriori poenae subici, ita ut flammeis ignibus exurantur: consentaneos uero et usque adeo contentiosos capite puniri praecipimus, et eorum bona fisco
7 nostro uindicari sancimus. si qui sane etiam honorati aut cuiuslibet dignitatis uel maiores personae [ad] adhuc inauditam et turpem atque per omnia infamem sectam, uel ad doctrinam Persarum se transtulerint, eorum patrimonia fisco nostro adsociari facies, ipsos quoque Phaenensibus uel Proconnensibus
8 metallis dari. ut igitur stirpitus amputari lues haec nequitiae de saeculo beatissimo nostro possit, deuotio tua iussis ac statutis
a. 302? tranquillitatis nostrae maturet obsecundare. Dat. prid. k. April. Alexandriae.

(TITULUS XVI.)

DE LEGITIMA SUCCESSIONE.

XVI. 1, 1 Scriptura diuina sic dicit:

Filiae Salfad adstantes ante Moysen et Eleazarum sacerdotem et principes omnemque senatum filiorum Israhel in foribus
2 tabernaculi testimonii dixerunt: pater noster mortuus est et filii non fuerunt ei, sed filiae, et ideo non deleatur nomen patris
3 nostri de medio tribus suae. non est ei masculus: date nobis
4 possessionem in medio fratrum patris nostri. et obtulit Moyses

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Line 3. *Adeo.* Huschke emends *aduersos deos.* Cp. Paulus v. 21, § 2.

Line 9. *Phaenensibus uel Proconnensibus.* The former was in Arabia; the latter, Proconesum, an island in the Propontis (Huschke). Dirksen, has *Phocensibus* as an alternative reading to *Phaenensibus.* *Phocaea* was a city in Minor Phrygia. Mommsen quotes Theodoret, *Hist. Eccl.* 4, 22, *De Christianis Alexandrinis:* πολλοὶ.....τοῖς φεννησίοις καὶ Προκονησίοις παρεδίδοντο μετάλλοις. Eusebius, *Hist. Eccles.* 8, 13, *et de mart. Palaest.*, 7, mentions copper mines worked in the city of Phoena, or Phoenus of Trachonis.

Line 12. Huschke gives the date 292-295. Mommsen suggests that, as Diocletian captured Alexandria after a siege of eight months in 297, that might be the year when this Constitution was published. But he was again at Alexandria in 302, and so, this too might be the date of the Constitution.

Line 17—page 134, line 8. Num. xxvii. 1-11: Then came the daughters of Zelophehad, the on of Hepher, the son of Gilead, the son of Machir, the son of Manasseh, of the families of Manasseh, the son of Joseph; and these are the names of his daughters: Mahlah, Noah, and Hoglah, and Milcah, and Tirzah. And they stood before Moses, and before Eleazar the priest, and before the princes and all the congregation, by the door of the tabernacle of the congregation, saying: Our father died in the wilderness, and he was not in the company of them that gathered themselves together against the Lord in the company of Korah; but died in his own sin, and had no sons. Why should the name of our father be done away from among his family, because he hath no son? Give unto us *therefore* a possession among the brethren of our father. And Moses brought their cause before the Lord. And the Lord spake unto Moses, saying: The daughters of Zelophehad speak right: thou shalt surely give them a possession of an inheritance among their father's brethren; and thou shalt cause the inheritance of their father to pass unto them. And thou shalt speak unto the children o

their misdeeds are clearly the offspring of a fantastic and lying imagination, we have appointed for these people the condign pains and penalties which are their due.

We order that the founders and heads of these sects be subjected to severe punishment, and, together with their abominable writings, burnt in the flames. We direct that their followers, if they continue recalcitrant, shall suffer capital punishment, and their goods be forfeited to the Imperial treasury.

And if those who have gone over to that hitherto unheard-of, scandalous and wholly infamous creed, or to that of the Persians, are persons who hold public office, or are of any rank or standing, you will see to it that their estates are confiscated and the offenders sent to the Phænensian or Proconnensian mines.

And in order that this plague of iniquity shall be completely extirpated from this our most happy age, let your zeal hasten to carry out our orders and commands. Given at Alexandria, March 31st.

TITLE XVI.

"OF STATUTORY SUCCESSION."

The Divine Scripture says thus:

The daughters of Salfad, standing before Moses and Eleazar the Priest and the princes and the whole body of Elders of the Children of Israel in the courts of the Tabernacle of Testimony said:

Our father is dead, and he had no sons but only daughters. Let not therefore the name of our father be blotted out from the midst of his tribe. He has no male child. Give to us a possession in the midst of our father's brothers.

(PAGE 132 *cont.*)
Israel, saying, If a man die, and have no son, then ye shall cause his inheritance to pass unto his daughter. And if he have no daughter, then ye shall give his inheritance to his brethren. And if he have no brethren, then ye shall give his inheritance unto his father's brethren. And if his father have no brethren, then ye shall give his inheritance unto his kinsman that is next to him of his family, and he shall possess it: and it shall be unto the children of Israel a statute of judgment, as the Lord commanded Moses.

From the second half of verse 8, "then ye shall cause," till first half of verse 11, "and if his father have no brethren," has dropped out of the text of the Collatio. Observe that the middle part of the text, though essential, is omitted. The Hebrew is, as rendered in the A.V., "to his kinsman that is next to him of his family." The writer of the Collatio translated *de tribu eius* "of his tribe," which assimilates the text to the rule of Roman Law, that, failing *agnates*, the *gens* succeeded. The Greek is ἐκ τῆς φυλῆς, class or tribe. The Hebrew משפחה is a much smaller division than a tribe, the Hebrew term for which is שבט.

XVI. 1, 5 petitionem earum coram deo. et locutus est dominus Moysi
6 dicens: recte filiae Salphad locutae sunt: et ideo dabitis eis
7 possessionem hereditatis in medio fratrum patris earum. et dices
haec filiis Israhel: homo si decesserit et filium non habuerit,
. . . . . .
dabitis hereditatem proximo eorum de tribu eius: et possidebit
8 omnia eius: et erit haec filiis Israhel iustificatio iudiciorum
secundum quae constituit dominus Moysi.

XVI. 2, 1 Gaius institutionum libro III legitimas sic ordinat successiones:

Intestatorum hereditates lege duodecim tabularum primum
2 ad suos heredes pertinent. sui autem heredes existimantur liberi
qui in potestate morientis fuerunt, ueluti filius filiaue, nepos
neptisue [ex filio], pronepos proneptisue ex nepote filio nato
prognatus prognataue. nec interest naturales [sint] liberi an
adoptiui. ita demum tamen nepos neptisue et pronepos proneptisue suorum heredum numero sunt, si praecedens persona
desierit [in potestate parentis esse, siue morte id acciderit] siue
alia ratione, ueluti emancipatione. nam si per id tempus, quo
quisque morietur, filius in potestate eius sit, nepos ex eo suus
heres esse non potest. idem et in ceteris deinceps liberorum
3 personis dictum intellegimus. uxor quoque, quae in manu est,
[ei cuius in manu est] sua heres est, quia filiae loco est: item
nurus quae in filii manu est, nam et haec neptis loco est. sed
ita demum erit sua heres, [si] filius, cuius in manu sit cum pater
moritur, in potestate eius non sit. idemque dicimus et de ea,
quae [in] nepotis manu matrimonii causa sit, quia proneptis loco
4 est. postumi quoque, [qui], si uiuo parente nati essent, in
potestate eius futuri forent, sui heredes sunt.

c. 2 = *Gaius* iii. 1-17, till *ex senatus consulto, p.* 136, *line* 2, nearly all missing in the manuscript of Gaius, restored from the Collatio; *Iustinian Inst.* iii. 1, 2, has been in part restored from this passage (xvi. 1-5).

Lines 11-12. *Intestatorum.....pertinent.* Cp. Justinian's Institutes iii. 1, § 1.

Lines 12-22. *Sui.....intellegimus.* Cp. Justinian's Institutes iii. 1, § 2: Gaius i. 114 and 115b; ii. 139 and 159; iii. 40; Ulpian xxii. 14; xxiii. 3; xxix. 1.

Lines 28-29. *Postumi.....heredes sunt.* Cp. Justinian's Institutes iii. 1, 2 *fin.*, *in potestate eius*; *i.e.*, immediate power without any intervening ascendant. See above, § 2 in this chapter: *nam si per id tempus quo quis moritur filius in potestate eius sit, nepos ex eo suus heres esse non potest.*

And Moses brought their petition before God.

And the Lord spake unto Moses, saying:

The daughters of Salfad have spoken rightly; and ye shall therefore give unto them possession of an inheritance in the midst of their father's brothers.

And thou shalt say these things to the children of Israel: If a man die and have no son, ye shall give the inheritance to the nearest of those of his tribe, and he shall possess all his property. And this shall be for the children of Israel a statute of judgments according to that which the Lord has appointed unto Moses.

Gaius, in the Third Book of his Institutes, arranges the order of statutory successions as follows:

Intestate successions devolve by the Law of the Twelve Tables first to self-successors.

Self-successors are children who were in the power of the deceased at the time of his death, such as a son or daughter, a grandson or granddaughter [by a son], a great-grandson or a great-granddaughter by a grandson who was the issue of a son. It makes no difference whether they are children by birth or adoption. The grandson or granddaughter and great-grandson or great-granddaughter will be counted among self-successors, only if the person next before them had ceased to be [in the power of the parent, either through death] or other cause, such as emancipation. For, if a son was in the power of the deceased at the time of his death, a grandson by that son cannot be a self-successor; and the same rule applies to the rest of a man's descendants in their order.

A wife too, who is in marital power, is the self-successor of the one in whose marital power she is, because she is in the position of a daughter. So likewise, a daughter-in-law who is in a son's marital power, for she is in the position of a granddaughter. She will, however, only be a self-successor if the son, in whose marital power she is, is not himself in his father's power at the latter's decease. The same rule applies to the grandson's wife who is in his marital power, because she is in the position of a great-granddaughter.

Posthumous children, too, who, had they been born in their deceased parent's lifetime would have been in his power, are his self-successors.

The same is the rule with respect to those on whose behalf the

XVI. 2, 5 Idem iuris est de his, quorum nomine ex lege Aelia Sentia uel ex senatus consulto post mortem patris causa [probatur: nam et hi uiuo patre causa] probata in potestate eius futuri essent.

6 [Quod] et de eo filio, qui ex prima secundaue mancipatione post mortem patris manumittitur, intellegemus.

7 [Igitur] cum filius filiaue et ex altero filio nepotes neptesue extant, pariter ad hereditatem uocantur nec qui gradu propior est, ulteriorem excludit. aequum enim uidetur nepotes neptesue in patris sui locum portionemque succedere. pari ratione et si nepos neptisue sit ex filio et ex nepote pronepos proneptisue, simul uocantur.

8 Et quia placebat nepotes neptesue, item pronepotes proneptesue in patris sui locum succedere, conueniens esse uisum est non in capita, sed in stirpes hereditates diuidi, ita ut filius dimidiam partem hereditatis ferat [et] ex altero filio duo pluresue nepotes alteram dimidiam: item si ex duobus filiis nepotes extent, ex altero filio unus forte uel [duo], ex altero tres aut quattuor, [ad unum aut ad duos dimidia pars pertineat et ad tres aut quattuor] altera dimidia.

9 De agnatis. si nullus sit suorum heredum, tunc hereditas pertinet ex eadem lege duodecim tabularum ad agnatos.

10 Uocantur autem agnati, qui legitima cognatione iuncti sunt. legitima autem cognatio est quae per uirilis sexus personas coniungitur: itaque [qui] eodem patre nati sunt fratres agnati sibi sunt, qui etiam consanguinei uocantur, nec requiritur, an matrem eandem habuerint.

Item patruus fratris filio et inuicem is illi agnatus est. eodem numero sunt fratres patrueles inter se, id est qui ex duobus fratribus progenerati sunt, quos plerique etiam consobrinos uocant: qua ratione scilicet etiam ad plures gradus agnationis
11 peruenire poterimus. non tamen omnibus simul agnatis dat lex duodecim tabularum hereditatem, sed his, qui tum cum certum est aliquem intestatum decessisse, proximo gradu sunt.

12 Nec in eo iure successio est: ideoque si hereditatem proximus omiserit uel antequam hereditatem adierit decesserit, sequentibus
13 nihil iuris ex lege competit. ideo autem non mortis tempore, quis proximus erit, requirimus, sed eo tempore, quo certum fuerit aliquem intestatum decessisse, quia si quis testamento facto decesserit, melius esse uisum est tunc requiri proximum, cum certum esse coeperit neminem ex [eo] testamento heredem fore.

Line 2. *Causa probatur.* See Gaius, i., §§ 65-75.

provisions of the Lex Aelia Sentia or the Senatus-consultum have been satisfied by proof of excusable error, which proof has been brought subsequently to the parent's death ; for if the error had been proved during their father's lifetime, they would have been in his power.

The same rule applies to a son who, after having undergone a first or second mancipation, is manumitted after his father's death.

Accordingly, when there are a son or daughter and grandsons or granddaughters by another son, they are called to the succession simultaneously. And the nearer in degree does not exclude the more remote ; for it seems just, that grandsons or granddaughters should succeed to their father's place and share. Similarly also, a grandson or granddaughter by one son and a great-grandson or great-granddaughter by another grandson are called to the succession simultaneously.

And since it was accepted that grandsons and granddaughters and also great-grandsons and great-granddaughters should succeed to their father's place, it seemed consistent that the succession should be divided, not according to individuals, but according to stems, so that the son should take a moiety and the two or more grandchildren by the other son should share between them the other moiety ; and if there are grandchildren by two sons, one of whom has left one or [two] children, while the other has left three or four children, [the single child or the two children of the one son take one half of the inheritance, and the three or four children of the other son take] the other half.

Of Agnates. If there is no self-successor, the succession, by the same Law of the Twelve Tables, devolves to the agnates.

Agnates are those related through statutory cognation. Statutory cognation is kinship through persons of the male sex ; thus, brothers by the same father are agnates. They are also called blood-relations, and it is not required that they should have the same mother. So, too, a father's consanguineous brother is agnate to his brother's son, and *vice versa*. To the same category belong consanguineous brothers' sons, whom many also style *consobrini*. Further degrees of agnation can be traced in the same way.

The Law of the Twelve Tables does not, however, give the succession to all the agnates simultaneously, but only to those who are of the nearest degree at the moment when it becomes certain that a person has died intestate.

XVI. 2,14 quod ad feminas tamen adtinet hoc iure aliud in ipsarum hereditatibus capiendis placet, aliud in ceterorum ab his capiendis. nam feminarum hereditates proinde agnationis iure redeunt atque masculorum: nostrae uero hereditates ad feminas ultra consanguineorum gradum non pertinent. itaque soror fratri sororiue legitima heres est, amita uero et fratris filia heres esse non potest. sororis autem nobis loco est etiam mater aut nouerca, quae per in manum conuentionem apud patrem nostrum ius filiae nancta
15 est. Si [ei] qui defunctus erit sit frater et alterius fratris filius, sicut ex superioribus intellegitur, frater potior est, quia gradu praecedit: sed alia facta est iuris interpretatio inter suos heredes.
16 quod si defuncti nullus frater extet, sed sint liberi fratrum, ad omnes quidem hereditas pertinet, sed quaesitum est, si dispari numero sint, forte nati ex uno unus uel duo et ex altero tres aut quattuor, utrum in stirpes diuidenda sit hereditas, sicut inter suos heredes iuris est an potius in capita. iamdudum autem placuit in capita diuidendam hereditatem: itaque quotquot erunt ab utraque parte personae, in tot portiones hereditas diuidetur et
17 singuli singulas portiones ferunt. si nullus agnatus sit, eadem lex duodecim tabularum gentiles ad hereditatem uocat. qui sint autem gentiles, primo commentario retulimus et cum illic admonuerimus gentilicium ius in desuetudinem abisse, superuacuum est hoc quoque loco de ea re curiosius tractare.

XVI. 3. 1 Paulus libro sententiarum IIII sub titulo de intestatorum successionibus:

Intestati dicuntur, qui testamentum facere non possunt [uel iure fecerunt cum possent] uel ipsi linum ut intestati decederent

c. 3, 1-13. *From this passage, Paulus Sent.* iv. 8, 1-13 *is restored.*

Line 4. *Nostrae uero hereditates, i.e.*, left by males.

Lines 4-5. *Consanguineorum gradum, i.e.*, sisters by the same father.

Lines 27 to p. 140, *l.* 3. For paragraph 1, cp. Justinian's Institutes iii. 1 *pr.*, with its divisions of invalid Wills into *testamentum non iure factum, ruptum, irritum*, and *destitutum*.

Line 27. *Testamentum facere non possunt, i.e.*, children (males under 14, females under 12), lunatics, and those who have not *commercium*. But there is a distinction between the last class and the first two classes; see *Digest* xxxviii. 16, *l.* 1, *pr.*: *plane, qui testare non potuit, proprie non est intestatus, puta impubes, furiosus uel cui bonis interdictum est; sed hos quoque pro intestatis accipere debemus.*

Lines 27-28. *Qui testamentum facere non possunt* [*uel iure non fecerunt cum possent*]; Huschke has instead *qui testamentum (fecerunt cum) facere non possent.*

Lines 27-28. [*Uel iure non fecerunt cum possent.*] Cp. Gaius ii., 151, 152; *Digest* xxviii. 4, *l.* 4; *ibid.* xxxvii., 11, *l.* 1, § 10; Justinian's Code vi. 23, *l.* 30.

And in succession by this title, there is no advancement in grade. Accordingly, if the agnate of the nearest degree has declined the succession, or died before acceptance, those in the next degree of agnation do not become entitled under this statute.

Hence, the date for determining who is the nearest agnate is not the moment of death, but the moment when it becomes certain that a person has died intestate; because, when a will had been made, it seemed better to take the nearest agnate at the moment when it becomes sure that there will be no heir under the will.

As regards females, the rules of titles by descent differ according to whether they leave property or take it. For inheritances left by females devolve by the same title of agnation as do those of males. But our inheritance does not devolve to females beyond the degree of blood-relationship. Thus, a sister is a statutory successor to her brother or sister by the same father, but neither a father's sister nor a brother's daughter can be a statutory successor to her nephew or uncle. A mother or a stepmother who, by virtue of being in the marital power of our father, has acquired the status of his daughter, is our quasi-sister.

If the deceased left a brother, and a nephew by another brother, the brother, being nearer in degree, is preferred, as can be learnt from what has been said above. But the rule is different in the case of self-successors.

If the deceased left no surviving brother, but there are children of more than one brother, they are all entitled to the succession. When brothers left an unequal number of children, if, for instance, one brother left one or two children, and another brother three or four, it was a question whether the inheritance is to be divided according to stems, as is the rule in the case of self-successors, or distributed in equal portions among those entitled. It has, however, long been settled that the inheritance is to be divided equally among the individuals entitled; and, therefore, according to the number of individuals descended from either side, into so many portions is the inheritance divided, so that each individual takes an equal share.

If there is no agnate, the above-mentioned Law of the Twelve Tables calls the Gentiles to the succession. Who the Gentiles are, we have stated in the First Book. And as we have there pointed out, the whole system of Gentile succession is obsolete. It is therefore superfluous to discuss the subject here again in detail.

abruperunt uel quorum hereditas repudiata est quibusue condicio defecerit, nisi iure praetorio [non iure] factum testamentum
XVI. 3, 2 obiecta doli exceptione optinebit. horum quorum testamenta rumpuntur aut inrita fiunt, ipso quidem iure testati decedunt, sed per consequentias sublato testamento intestati decedunt.
3 intestatorum hereditas lege duodecim tabularum primum suis heredibus, deinde agnatis et aliquando quoque gentilibus deferebatur. sane consanguinei, quos lex non adprehenderat, interpretatione prudentium primum inter agnatos locum
4 acceperunt. sui heredes sunt primo loco filius filia in potestate patris constituti: nec interest, si adoptiui sint an naturales et secundum legem Iuliam Papiamue quaesiti, modo maneant in
5 potestate. qui sui heredes sunt, ipso iure heredes etiam ignorantes constituuntur, ut furiosi aut infantes et peregrinantes: quibus bonorum possessio nisi propter praetoriam actionem non
6 erat necessaria. suis heredibus adeo a morte testatoris rerum hereditariarum dominium continuatur, ut nec tutoris auctoritas pupillis nec furiosis curator sit necessarius, nisi forte [ut abstineant, si minus forte] soluendo sit hereditas: quamuis etiam furiosus, si resipuerit, et pupillus, si adoleuerit, abstinere possint.
7 post mortem patris natus uel ad hostibus reuersus aut ex primo

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Lines 1-2. *Condicio defecerit.* After these words Huschke adds (*quiue capite minuti fuerint*, and says that much besides has fallen out, such as *uel mors cretionisue finis additionem praeuenerit* (Gaius ii. 144).

Line 7. *Deinde agnatis.* Huschke has *deinde* (*consanguineis*) *et agnatis*, and gives as his reason for supplying *consanguineis*, the word commencing the following sentence, which in the MSS. reads *consanguineis*, and which he thinks dropped out of this place and was substituted for *consanguineos*, the word which he reads in the next sentence after *sane*.

Line 8. *Adprehenderat.* Before this word Huschke supplies *aperte*=explicitly.

Line 9. *Interpretatione prudentium.* See paragraph 20 at the end of the chapter. The *Lex Voconia* contained a provision that a woman could not be instituted heiress to a *classicus*, *i.e.*, one possessed of a 100,000 sesterces and upwards (Gaius ii., § 274). Hence daughters had to be included in a fresh class of *consanguinei*, otherwise they would have been excluded altogether.

Lines 12-13. *Modo maneant in potestate.* This is taken by Huschke as a beginning of the next sentence.

Line 13. *Ipso iure heredes.* Cp. Justinian's Institutes iii. 1, § 3; *Digest* xxxviii. 16, *l.* 14; *ibid.* xxviiii. 2, *l.* 63.

Line 15. *Nisi propter praetoriam actionem.* Cp. Gaius iii. 34 *et seq.*

Lines 16-17. *A morte.....continuatur.* Cp. Justinian's Institutes iii., 1, § 3: *Digest* xxviii. 2, l. 11.

Line 18. *Nisi forte.* Cp. *Digest* xxix. 2, *l.* 11: *impuberibus liberis omni modo abstinendi potestas fit, puberibus autem ita, si ei non immiscuerint*; also *ibid. l.* 57 *pr.*

Lines 18-19. *Nisi forte* [*ut abstineant, si minus forte*] *soluendo sit hereditas.* Huschke has instead *nec si forte soluendo* (*non*) *sit hereditas*: "and he does not require this authority even, if the estate should prove insolvent."

Paulus, in the Fourth Book of the Sentences, under the title of "Succession of Intestates":

Those are said to be intestates who have no capacity to make a will [or, though they had the capacity did not make it in proper form], or themselves cut the cord with the express purpose of dying intestate: likewise, when the inheritance has been declined, or the conditions have failed: except that, where the will has been improperly made, the instituted heir, in conformity with the Praetorian law, will obtain the succession by pleading the *exceptio doli*.

Those whose wills are rescinded, or become null, die legally testate; but, as their wills are void, they become practically intestate.

Under the Law of the Twelve Tables, succession to intestates was first offered to self-successors, then to agnates, and sometimes also to members of the same gens. The statute does not indeed mention brothers and sisters; but the interpretation of the jurists has assigned them the first place among the agnates.

Self-successors are the following: in the first degree, a son or daughter in the father's power; and it makes no difference whether they are children by adoption or birth, and legitimate according to the Lex Julia et Papia, provided that they remain in power.

Self-successors become heirs by law, and even without their cognizance; as, for instance, if they are insane, infants, or abroad. A formal taking possession will not be necessary in their case, unless a Praetorian action is involved.

The ownership of things belonging to the estate passes immediately to the self-successors from the moment of the testator's decease, so much so that a ward does not require his guardian's authorisation nor a lunatic that of his committee; except, possibly for purposes of renunciation, should the estate prove insolvent; though the lunatic on recovery, and the ward on attaining puberty, may in any case renounce the succession.

Anyone born after his father's death, or who, after that event,

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PAGE 140, line 20. *Abstinere possint, i.e.* if the guardian of the ward or the committee of the lunatic respectively, had not previously renounced on their behalf.

Line 21 till p. 142, line 3. *Post mortem.....efficiuntur.* Cp. above in this title, chap. 2, §§ 4-6 and Justinian's Institutes, iii. 1, § 4.

secundoue mancipio manumissus cuiusue erroris causa probata [est], licet non fuerint in potestate, sui tamen patri heredes
XVI . 3, 8 efficiuntur. post filios filias ad intestatorum successionem inter suos ueniunt nepotes neptes, pronepotes proneptes ac deinde masculino sexu per filium descendentes, si nullo parentum inpedimento ipsi in aui potestate uel proaui familia remanserint: parentes enim liberis suis, cum quibus in potestate fuerint ipsi,
9 ordine successionis obsistunt. filii, si cum nepotibus ex alio filio susceptis in familia retinentur, ad intestati patris successionem cum fratris filiis uocantur: quibus in patris sui partem uenientibus hereditas in stirpes, non in capita diuiditur, ita ut unus filius et plures nepotes singulos semisses habeant. idemque euenit, si
10 auo ex duobus filiis inpari numero nepotes successerint. ex filia nepotes sui heredes non sunt: in aui enim materni potestate
11 alienam familiam sequentes ipsa ratione esse non possunt. eo tempore suus heres constituendus est, quo certum est aliquem intestatum decessisse: quod ex euentu deficientis condicionis et ortu nepotis, qui uiuo auo post mortem patris [conceptus sit et
12 post mortem aui] natus, finiri potest. quem filius emancipatus suscepit uel adoptauit, sui heredis locum in aui successione sic ut ipse pater obtinere non potest: [potest] adoptiuus, tamen nec
13 quasi cognatus bonorum possessionem eius petere potest. si sui heredes non sunt, ad agnatos legitima hereditas pertinebit, inter quos primum locum consanguinei optinent. agnati autem sunt cognati uirilis sexus per [uirilem sexum] descendentes, sicut filius
14 fratris et patruus et deinceps tota successio. inter agnatos et

c. 3, 14 = *Paulus Sent.* iv. 8, 14.

Lines 3-8. *Post filios.....obsistunt.* Cp. above in this title, chap. 2, § 2.

Lines 8-13. *Filii.....successerint.* Cp. above in this title, chap. 2. §§ 7 and 8.

Lines 15-17. *Eo tempore.....decessisse.* Cp. Justinian's Institutes, iii. 1, §§ 7, 8.

Lines 17-18. *Quod ex euentu deficientis condicionis et ortu nepotis.* The text seems to contemplate two cases requiring the determination of the date when a man is to be regarded as having died intestate: (1) where the condition, subject to which the heir has been appointed under the will, has failed; (2) where a subsequent birth has rescinded the will. Cp. Gaius ii., § 131 and Poste's Commentary, pp. 224, 225.

Lines 21-22. *Adoptiuus.....petere potest.* Cp. *Digest* I. 7, *l.* 23, and *ibid.* xxxviii. 8, *l.* 1, § 4.

Line 23. *Ad agnatos.* Cp. above in this title chap. 2, §§ 9 and 10.

Line 23. *Pertinebit.* Here the *Vercelli* MS. ends.

Line 26, till page 144, line 2. *Inter agnatos.....comprehenduntur.* Cp. *Digest*, xxxviii. 10, *l.* 10, § 4, and *ibid.* xxxviii. 7, *l.* 5 *pr.*

had returned home from captivity in the enemy's territory, one who was manumitted after the first or second mancipation, or had cause of error shown on his behalf—all these become self-successors, though none of them was in his father's power at the time of his death.

Failing sons or daughters, the self-successors of intestates are grandsons, granddaughters, great-grandsons, great-granddaughters, and remoter descendants in the male line provided that they have remained in their grandfather's power or in their great-grandfather's family, and have no surviving parents to bar their claims; for parents bar the succession of their children with whom they themselves have been in the power of the deceased.

Sons who remain in the family with grandsons begotten of another son, are called with their brother's children to the succession of their intestate father. As the children take their father's portion, the inheritance is divided according to stems, not according to the individuals entitled; and thus the son takes a half of the estate and the grandsons between them take the remaining half. The same principle applies if the self-successors are grandchildren by two sons, in unequal groups.

Grandsons by a daughter are not self-successors; for, as they belong in the male line to another family, they cannot, on that ground, be in their maternal grandfather's power.

The time for determining the self-successor is the moment when it has become certain that a person has died intestate; and this is definitely settled on failure of the condition of the will, or on the birth of a grandson, conceived in his grandfather's lifetime, and born after the death of his (father and subsequently of his) grandfather.

An emancipated son's child, whether begotten or adopted, cannot, any more than his father, obtain the status of a self-successor to his grandfather. An adoptive child cannot even claim Praetorian possession as a cognate.

Failing self-successors, the statutory succession will pass to the agnates; a class in which brothers and sisters occupy the first grade. Agnates are male cognates, tracing their descent through the male line; namely, a brother's son, a father's brother and the whole line of successors worked out on the same principle.

cognatos hoc interest, [quod] in agnatis etiam cognati continentur, inter cognatos uero agnati non conprehenduntur. et ideo patruus agnatus est et cognatus, auunculus autem cognatus
XVI 3, 15 tantummodo est. consanguinei sunt eodem patre nati, licet diuersis matribus, qui in potestate fuerunt mortis tempore: adoptiuus quoque frater, si non sit emancipatus, et hi qui post
16 mortem patris nati sunt uel causam probauerunt. soror iure consanguinitatis tam ad fratris quam ad sororis hereditatem
17 admittitur. consanguineis non existentibus agnatis defertur hereditas, prout quis alterum gradu praecesserit. quod si plures
18 eodem gradu consistunt, simul admittuntur. si sint defuncti fratris et filius et nepos fratre non existente, filius fratris nepoti
19 praefertur. sed si duorum fratrum sint liberi, non in stirpes, sed in capita hereditas distribuitur, scilicet ut pro numero singulorum
20 uiritim distribuatur hereditas. feminae ad hereditates legitimas ultra consanguineorum successiones non admittuntur: id quod iure ciuili Voconiana ratione uidetur effectum: ceterum lex duodecim tabularum sine ulla discretione sexus admittit.

XVI 4, 1 Vlpianus libro singulari [regularum] sub titulo de legitimis hereditatibus:

Intestatorum ingenuorum hereditates pertinent primum ad suos heredes, id est liberos qui in potestate sunt ceterosque qui liberorum loco sunt: si sui heredes non sunt, ad consanguineos. id est fratres et sorores ex eodem patre: si nec hi sunt, ad reliquos agnatos [proximos, id est cognatos] uirilis sexus per mares descendentes eiusdem familiae. id enim cautum est lege duodecim tabularum hac: 'si intestatus moritur, cui suus heres
2 nec escit, agnatus proximus familiam habeto.' si agnatus defuncti non sit, eadem lex duodecim tabularum gentiles ad heredi-

c. 3, 15-17. *From this passage, Paulus Sent.*, iv. 8, 15-17 *is restored.*

c. 3, 18 = *Paulus Sent.*, iv. 8, 18.

c. 3, 19. *From this passage, Paulus Sent.*, iv. 8, 19 *is restored.*

c. 3, 20 = *Paulus Sent.*, iv. 8, 22.

c. 4, 1 = *Ulpianus Reg.*, xxvi. 1.

c. 4, 2. *From this passage, Ulpianus* xxvi. 1*a*, *is restored.*

Lines 4-5. *Consanguinei.....tempore.* Cp. above in this title, chap. 2, § 10.

Lines 7-9. *Soror.....admittitur.* Cp. above, chap. 2, § 14.

Lines 9-11. *Consanguineis.....admittuntur.* Cp. above, chap. 2, § 11, and Justinian's Institutes, iii. 2, § 5.

Lines 13-15. *Sed.....hereditas.* Cp. above, chap. 2, § 16.

Lines 15-18. *Feminae.....admittit.* Cp. above, chap. 2, § 14; Justinian's Institutes, iii. 2, § 3; Gaius, iii. 23, and Ulpian, xxvi. 6.

A distinction between cognates and agnates is, that agnates are necessarily cognates, but cognates need not be agnates. Thus, a father's brother is both an agnate and a cognate, but a mother's brother is a cognate only.

Consanguinei are children of the same father, even if of different mothers, provided they were in their father's power at his decease. Included in this class are an adopted brother who has not been emancipated, posthumous children, and those who have shown "excusable proof of error."

A sister is admitted, by right of consanguinity, to a share in her deceased brother's or sister's estate.

Where there are no brothers or sisters, the succession is offered to agnates in turn according to their degree of relationship to the deceased. If there are several of the same degree, they are admitted together to the succession. If the intestate's brother is deceased, and has left a son and a grandson by another son who is deceased, the brother's son is preferred to the grandson.

But if two brothers of the deceased have left children, the inheritance is divided, not according to stems but according to individuals; that is, the estate is distributed in equal shares among those entitled.

Female relatives beyond the grade of sisters, are not admitted to the statutory succession. This rule seems to have been an application, by the civil law, of the principle of the Lex Voconia: The Twelve Tables admit agnates without distinction of sex.

Ulpian, in his Single Book [of Rules], under the title "Of Statutory Succession":

The succession of intestates who belong to a gens devolves first to self-successors, that is children in power and others who stand in the position of children. Failing self-successors, it devolves to consanguineous relatives, that is, brothers and sisters by the same father; failing these, to the remaining [nearest] agnates, [that is, male cognates] of the same family, tracing descent from a common ancestor through the male line. For thus is it laid down in the following law of the Twelve Tables: "If one die intestate and has left no self-successor, let the nearest agnate have his estate."

If the deceased has no agnate, the same law of the Twelve

PAGE 144, line 21. *Ingenuorum*, with Huschke, following Ulpian. Mommsen retains *gentiliciorum* from the MSS., but the chapter does not deal primarily with gentile successions, but only as used in former ages as a last resort. Possibly the rare word *gentilicia* at the end of the chapter unconsciously influenced the scribe in substituting *gentiliciorum* here.

tatem uocat his uerbis: 'si agnatus nec escit, gentiles familiam [habento.' nunc nec ullus est] heres hinc nec gentilicia iura in usu sunt.

XVI. 5, 1 Idem [libro] institutionum . . . [sub titulo de successionibus] ab intestato:

Ab intestato quoque hereditas defertur aut per ius ciuile aut per praetoris beneficium: per ius ciuile suis heredibus uel liberis, qui in potestate fuerunt, [qui sunt] filii filiae et deinceps qui in locum defuncti parentis, quia ex eodem nati sunt, succedunt.

XVI 6, 1 Idem eodem libro:

Post suos ab intestato legitimi admittuntur, primum consanguinei. [consanguinei] sunt frater et soror, qui in eiusdem potestate patris fuerunt, etsi ex diuersis matribus nati sunt. consanguineos et adoptio facit et adrogatio [et] causae probatio et in manum conuentio.

XVI. 7, 1 Idem eodem libro:

De[ficientibus] consanguineis legitimi uocantur. hi sunt agnati qui nos per patris cognationem contingunt uirilis sexus: nam sciendum feminis ultra consanguineas hereditates legitimas
2 non deferri. suis praetor solet emancipatos liberos itemque ciuitate donatos coniungere data bonorum possessione, ita tamen, ut bona si qua propria habent, his qui in potestate manserunt conferant. nam aequissimum putauit neque eos bonis paternis carere per hoc, quod non sunt in potestate neque praecipua bona propria habere, cum partem sint ablaturi suis heredibus.

XVI. 8, 1 Idem libro qui supra [sub titulo] de suis heredibus:

Post agnatos praetor uocat cognatos: cognati autem sunt, qui nos per patrem aut matrem contingunt: post cognatos uirum

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Line 4. *Institutionum.* Blume and Huschke supply from Pithou's conjecture, after this word *secundo.*

Lines 10-15. Cp. above, in this title, chap. 2, § 9, and chap. 3, §§ 15 and 16.

Lines 20-25. Cp. Gaius iii., §§ 19, 20 and 26; *ibid.* i., § 94; Justinian's Institutes, iii. 1, § 9, and *Digest* xxxvii. 6, *l.* 1 *pr.*

Line 21. *Data bonorum possessione.* Here the Vienna MS. ends.

Lines 22-23. *Ut bona si qua propria habent, ...conferant.* This refers to *Collatio Bonorum*, the doctrine of hotchpot. See Hunter's "Roman Law," pp. 849 and 850; Huschke explains the passage in a note: *Si quid superest, deducto aere alieno:* "After paying debts due from the estate they must hand over the balance to the unemancipated children." This is clearly an error.

Line 26. *De suis.* Blume and Huschke add *et legitimis*, as the chapter does not deal exclusively with self-successors.

Lines 27—page 148, line 1. *Post agnatos.....uxorem.* Cp. Gaius iii., § 27, and Justinian's Institutes iii., 2 § 3; *ibid.* iii., 9, § 3.

Tables calls Gentiles of the deceased to the succession in the following terms: "If there is no agnate, let the Gentiles have the estate."

At the present day, this would not constitute a title to succession, Gentile rights being obsolete.

The same jurist, in the [book] of his Institutes, [under the title of Successions] in Intestacy:

An intestate's estate devolves either under the civil law or by the praetor's grace; under the civil law, to self-successors, that is, descendants who were in the power of the deceased; these are a son, daughter, or remoter descendants who take the place of a deceased parent because they are his posterity.

The same jurist, in the same book:

Next to self-successors, statutory heirs are admitted to the succession in intestacy, and first *consanguinei*. *Consanguinei* are a brother and sister who were in the power of the same father, even though born of different mothers. The status of consanguinity is also the result of adoption, adrogation, "proof of error," and marital power.

The same jurist, in the same book:

Failing *consanguinei*, statutory heirs are called to the succession. These are agnates of the male sex, connected with us through paternal relationship; for statutory successions, be it known, do not devolve to female relatives beyond the grade of sisters.

The Praetor gives to emancipated children, and to those upon whom citizenship has been conferred, possession of the property conjointly with the self-successors, but with this proviso, that they bring into hotch-pot any property they have. For, in the opinion of the Praetor, it was but fair that, on the one hand, emancipated children should not be deprived of their father's estate, through not being in power, and on the other, that they should not retain their own property exempt from burdens, seeing that they will now be depriving self-successors of a portion of the estate.

The same jurist, in the same book as above, under the title "Of Self-Successors":

Next to agnates, the Praetor calls cognates. Cognates are those related either through father or mother. Next to cognates, he calls husband and wife.

XVI. 8, 2 et uxorem. et haec, si qui decessit non fuit libertinus uel stirpis libertinae: ceterum si libertinus est uel libertina, patrono eius legitima hereditas patronaeue lege duodecim tabularum defertur.

XVI. 9, 1 Idem eodem libro:

Post familiam patroni uocat praetor patronum et patronam, item liberos et parentes patroni et patronae, deinde uirum et 2 uxorem, mox cognatos patroni et patronae. quod si is qui decessit liber fuit [nec] ex remancipatione manumissus, lex quidem duodecim tabularum manumissori legitimam hereditatem detulit, sed praetor aequitate motus decem personas cognatorum ei praetulit has: patrem matrem, filium filiam, auum auiam, nepotem neptem, fratrem sororem, ne quis occasione iuris san- 3 guinis necessitudinem uinceret. sed imperator noster in hereditatibus quae ab intestato deferuntur eas solas personas uoluit admitti, quibus decimae inmunitatem ipse tribuit.

Lines 1-2. *Et haec.....libertinae.* Cp. Justinian's Code vi. 4, *l.* 4, § 23.

Lines 5-15. *Post familiam.....tribuit.* Cp. Ulpian, xxviii. 7, and Justinian's Institutes, iii. 9, §§ 3, 5.

Line 8. *(Nec) ex remancipatione manumissus.* Huschke has *ex (mancipatione citra) remancipationem manumissus. Citra remancipationem=sine remancipatione.* Schulting has *absque remancipatione.*

Lines 5-13. According to the Praetor's extension of the area of succession, the relatives of the patron succeeded in the following order (*Theoph. J.*, iii. 9, 1):

1. When a freedman or freedwoman died intestate and childless after the death of the patron, then the agnates of the patron succeeded (*tum quem ex familia*).

2. In default of these came the children or parents of the patron (*patronus, patrona*). Theophilus explains this case as follows:—If the children or parents neglected to take as such after the children of the freedman (*unde legitimi*), and the time for asking the *bonorum possessio* had passed, and they had not asked under the immediately preceding head (*tum quem ex familia*), then either the patrons or their children or parents could come in under this second description (*unde liberi patroni patronaeque et parentes eorum*).

3. In default of all these, the cognates of the patron took, the nearer excluding the more remote. (Hunter's Roman Law, p. 869). These rules do not apply to one who was free, *e.g.*, a *filius familias*, who had been mancipated, manumitted and re-mancipated.

These rules only apply when the deceased had not been a freedman or of freedman's stock. In case the deceased was a freedman or freedwoman, the statutory succession devolves, under the Twelve Tables, to the patron or patroness.

The same jurist in the same book:

Next to the patron's family, the Praetor calls the patron and patroness, their children and the patron's and patroness's parents; then husband and wife, and then the patron's and patroness's cognates.

If the deceased was a freeman but [had not been] manumitted after remancipation, the law of the Twelve Tables offered the statutory succession to the manumitter. But the Praetor, on equitable grounds, gave the preference to the following ten classes of relative: father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter, brother, sister, so that no one shall use the law to override the claims of blood relationship.

The Emperor decided to admit to succession in cases of intestacy only those persons to whom he himself accorded the exemption from the succession duty of a tenth of the value of the estate.

Page 148, lines 13-15. Caracalla raised the succession duty on testamentary successions and legacies from 5 per cent. (at which it had been fixed by the *Lex Julia de Uicesima hereditatum*, 6 C.E.) to 10 per cent. This *Lex Julia* exempted, however, Roman parents and children from payment of this duty. Nerva extended the exemption to mothers and their children, *etiam si cognationum iura non recepissent.* Trajan freed the *decem personae* and relatives to the sixth degree, and also *peregrini*, if they had *justi liberi* by a Roman citizen. All this applied to testate succession. Caracalla increased the succession duty; abolished all the immunities mentioned above, except to those he favoured (probably parents and children who had originally been exempted by the *Lex Julia*); and entirely abrogated intestate succession, except to this favoured class. The result was that the revenue from the duty paid on succession, under will, was doubled, and, in cases of intestacy, much property became *caducous* (see *Dio Cassius* 77, 9).

Lines 13-15. *Imperator noster.....tribuit.* Mommsen thinks that the MS. is incomplete. I am inclined to believe with Huschke, that this last sentence, stating the Emperor's decision, marks the conclusion of the book.

COMPARISON OF BIBLICAL TEXTS IN THE COLLATIO, VULGATE AND ITALA.

A COMPARISON OF BIBLICAL TEXTS IN THE COLLATIO, VULGATE AND ITALA.

VULGATE.	COLLATIO.	ITALA.
Num. xxxv. 16, 17.	I., i. 1, 2.	Num. xxxv. 16, 17. Ex Lugdunensi :
16. Si quis ferro percusserit, et mortuus fuerit qui percussus est : reus erit homicidii, et ipse morietur. 17. Si lapidem iecerit, et ictus occubuerit : similiter punietur.	Si quis percusserit hominem ferro et occiderit eum, mortem moriatur. si autem manu lapide, quo mori possit, percusserit et mortuus fuerit, homicida est : mortem moriatur.	Si autem ferro percusserit eum et mortuus fuerit, homicida est : morte puniatur homicida. si autem lapide manu percusserit, quo mori possit et mortuus fuerit, homicida est ; morte puniatur homicida.
Num. xxxv. 20, 21.	I., i. 3, 4.	Num. xxxv. 20, 21. Ex Lugdunensi :
20. Si per odium quis hominem impulerit, uel iecerit quidpiam in eum per insidias : 21. Aut cum esset inimicus, manu percusserit, et ille mortuus fuerit : percussor, homicidii reus erit. cognatus occisi statim ut inuenerit eum, ingulabit.	Si autem per inimicitiam impulerit eum uel inmiserit super eum aliquod uas ex insidiis et mortuus fuerit uel per iram percusserit eum manu et mortuus fuerit, mortem moriatur.	Si autem per inimicitiam impulerit eum et inmiserit super eum omne uas ex insidia, et mortuus fuerit, uel per iram percusserit eum de manu, et mortuus fuerit, morti moriatur qui percusserit : homicida est : morti puniatur homicida.
Num. xxxv. 22-25.	I., v. 1-4.	Num. xxxv. 22-25. Ex Lugdunensi :
22. Quodsi fortuitu, et absque odio, 23. et inimicitiis quidquam horum fecerit, 24. et hoc audiente populo fuerit comprobatum, atque inter percussorem et propinquum. sanguinis quaestio uentilata : 25. liberabitur innocens de ultoris manu, et reducetur per sententiam in urbem, ad quam confugerat, manebitque ibi, donec sacerdos magnus, qui oleo sancto unctus est, moriatur.	Si autem subito non per inimicitias inmiserit super eum aliquod uas non insidians uel lapidem, quo moriatur, non per dolum et ceciderit super eum et mortuus fuerit, si autem non inimicus eius fuerit neque quaesierit male facere ei, iudicabitis inter eum qui percussit, et proximum mortui secundum iudicia haec et liberabitis percussorem.	Si autem subito non per inimicitiam inmiserit super eum omne uas non ex insidia, uel omnem lapidem, quo moriatur, non per dolum, et occiderit super eum et mortuus fuerit, is autem non inimicus eius fuerit neque quaesierit male facere ei, et iudicabit synagoga inter eum qui percusserit et proximum sanguinis secundum iudicia haec et liberauit synagoga percussorem a proximo sanguinis.

VULGATE.	COLLATIO.	ITALA.
Exod. xxi. 18, 19.	II., i. 1, 2.	Exod. xxi. 18, 19. Ex Lugdunensi.
18. *Si* rixati fuerint uiri, et percusserit alter proximum suum lapide uel pugno. Et ille mortuus non fuerit, sed iacuerit in lectulo : 19. Si surrexerit, et ambulauerit foris super baculum suum, innocens erit qui percusserit, ita tamen ut operas eius, et impensas in medicos restituat.	Si autem contenderint duo uiri et percusserit alter alterum lapide aut pugno et non fuerit mortuus, decubuerit autem in lectulo, et si surgens ambulauerit homo foris in baculo, sine crimine erit ille, qui eum percusserat praeter ac cessationis eius mercedem dabit ei et medico inpensas curationis.	Si autem litigauerint duo uiri et percusserit quis proximum suum lapide aut ligno et non fuerit mortuus, decubuerit autem in lecto, et si surgens ambulauerit homo foris cum baculo, innocens erit ille qui percusserit eum : uerumtamen quod cessauit et medico curam illius dabit.
Exod. xxi. 20, 21.	III., i. 1, 2.	Exod. xxi. 20, 21. Ex Lugdunensi.
Qui percusserit seruum suum uel ancillam uirga, et mortui fuerint in manibus eius, criminis reus erit. Sin autem uno die uel duobus superuixerit, non subiacebit poenae, quia pecunia illius est.	Si quis percusserit seruum aut ancillam uirga et mortuus fuerit in manibus eius, iudicio uindicetur. quod si superuixerit die uno aut duobus, non uindicabitur, pretium enim ipsius est.	Si quis autem percusserit seruum suum aut ancillam suam de fuste, et mortuus fuerit sub manus eius, uindicio uindicetur. Si uero superuixerit die uno uel duobus, non uindicabitur : pretium enim illius est. Augustinus Spec. c. 58. Si autem rixabuntur duo uiri et percusserit aliquis ex his proximum suum lapide aut pugno aut ferro et non fuerit mortuus, decubuerit autem in lecto suo, et si exsurrexit homo et ambulauerit cum baculo, innocuus erit qui percussit : tantum quod cessationes eius dabit et curationes. si quis autem percusserit seruum suum aut ancillam suam uirga et mortuus fuerit sub manu eius, iudicio uindicetur : si uero superuixerit diem unum uel duos, non uindicabitur, pretium enim eius est.

VULGATE.	COLLATIO.	ITALA.
		Exod. xxi. 21. Augustinus locut. in Exodo II. 99 (3, p. 347D) : Si quis percusserit seruum suum aut ancillam suam in uirga.
Leuit. xx. 10.	IV., i. 1.	Leuit. xx. 10. Augustinus quaest. in Leuit. III. 83 (3, p. 521B) :
Si moechatus quis fuerit cum uxore alterius, et adulterium perpetrauerit cum coniuge proximi sui, morte moriantur et moechus et adultera.	Quicunque moechatus fuerit mulierem proximi sui, mortem moriatur qui moechatus fuerit et quae moechata fuerit.	Homo quicumque adulterauerit uxorem uiri aut quicumque adulteraauerit uxorem proximi sui, morte moriantur.
Deut. xxvii. 21.	VI., vii. 9.	Deut. xxvii. 21. Augustinus locut. de Jesu Naue. VI. 59 (3, p. 369A) :
Maledictus qui dormit cum omni iumento. et dicet omnis populus : Amen.	Maledictus, qui dormierit cum omni pecore.	Maledictus omnis qui dormierit cum omni pecore.
Exod. xxii. 2, 3.	VII., i. 2.	Exod. xxii. 2, 3. Augustinus quaest. in Exod. II. 84 (3, p. 449D) :
2. Si effringens fur domum siue suffodiens fuerit inuentus, et accepto uulnere mortuus fuerit ; percussor non erit reus sanguinis.	Si perfodiens nocte parietem inuentus fuerit fur et percusserit eum alius et mortuus fuerit hic, non est homicida is qui percusserit eum.	Si autem perfodiens inuentus fuerit fur et percussus mortuus fuerit, non est illi homicidium : si autem orietur sol super eum, reus est : pro morte morietur.
3. Quodsi orto sole hoc fecerit, homicidium perpetrauit et ipse morietur. si non habuerit quod pro furto, reddat, ipse uenundabitur.	Si autem sol ortus fuerit super eum, reus est mortis percussor : et ipse morietur.	

VULGATE.	COLLATIO.	ITALA.
Deut. xix, 16, 20.	VIII., i. 1-5.	Deut. xix. 16, 20. Lucifer de Athanasio, 1. 7 :
16. Si steterit testis mendax contra hominem, accusans eum praeuaricationis, 20. Ut audientes ceteri timorem habeant et nequaquam talia audeant facere.	Si steterit testis iniustus aduersus hominem accusandum accusans eum impietatis, stabunt duo homines, quibus est inuicem contentio, ante deum et ante sacerdotes et ante iudices, quicumque fuerint in illis diebus, cum inquisierint iudices diligenter et inuentus fuerit testis iniustus testificans iniusta, insurgentes aduersus eum facietis ei, sicut uoluit malefacere et delebitis malum de medio uestrum : et ceteri audientes timebunt nec audebunt haec mala facere inter uos.	Si autem steterit testis iniustus aduersus hominem detrahens ei iniquitatem, stabunt duo homines, quibus est ipsis contradictio, ante dominum et ante sacerdotem et in conspectu iudicii quicumque fuerit in diebus illis et interrogabunt diligenter iudices et ecce testis iniustus testificatus est iniqua resistens aduersus fratrem suum et facite ei, quemadmodum nequiter egit facere aduersus fratrem suum et auferes iniquum ex uobis ipsis, et ceteri audientes timebunt et non adponent amplius facere uerbum malignum.
Exod. xx. 16.	IX., i. 1.	Exod. xx. 16. Augustinus Quaest. in Exod. II. 71, 6 (3, p. 415B) :
Non loqueris contra proximum tuum falsum testimonium.	Falsum testimonium non dabis aduersus proximum tuum.	Falsum testimonium non dices aduersus proximum tuum. Lucifer de Athanasio 1, 3. Non falsum testimonium dices aduersus proximum tuum. Augustinus Spec. c. 42. Non dices falsum testimonium aduersus proximum tuum.
Exod. xxii. 7, 8.	X., i. 1.	Exod. xxii. 7, 8. Ex Wirceburgensi.
7. Si quis commendauerit amico pecuniam, aut uas in custodiam, et ab eo, qui susceperat, furto ablata fuerint : si inuenitur fur, duplum reddet. 8. Si latet fur, dominus domus applicabitur ad deos, et iurabit quod non extenderit manum in rem proximi sui.	Si aliquis dabit proximo suo argentum aut uas seruare, et furatum fuerit de domo hominis, si inuenitur qui furatus est, reddet duplum, quod si non fuerit inuentus fur, accedet is qui commendatum susceperat ante dominum et iurabit nihil se nequiter egisse de omni re commendata proximi sui et liberabitur.	'. . . fuerit de domo hominis si inuentus fuerit, fur reddet duplum : quod si non fuerit inuentus fur, accedet d(o)m(inu)s domus in conspectu dei et iurabit nihil maligne fecisse ex omni commendato proximi aut de omni re qua accusabitur.

VULGATE.	COLLATIO.	ITALA.
Exod. xxii. 1.	XI., 1, 1.	Exod. xxii. 1.
Si quis furatus fuerit bouem aut ouem, et occiderit uel uendiderit : quinque boues pro uno boue restituet, et quatuor oues pro una oue.	Si quis inuolauerit uitulum aut ouem et occiderit aut uendiderit, quinque uitulos restituet pro uitulo uno, quattuor oues pro oue una. quod si non habet unde reddat, uenundetur pro furto.	Augustinus quaest. in Num. IV. 10 (3, p. 531C) : In Exodo dicitur si quis furatus fuerit uitulum aut ouem, restituere debere quinque uitulos uel quattuor oues, si occiderit aut uendiderit. Augustinus spec. c. 74 : Quod si quis inuolauerit uitulum aut ouem et occiderit eum aut uendiderit, quinque uitulos reddet pro uno uitulo et quattuor oues pro una oue. quod si pauper est et non habet unde reddat, ueniat pro furto.
Deut. xviii. 10-14.	XV., 1, 1-5.	Deut. xviii. 10-14. Hieronymus contra Pelag. I. 36, p. 721 Vall :
10. Nec inueniatur in te qui lustret filium suum, aut filiam ducens per ignem : aut qui ariolos sciscitetur, et obseruet somnia atque auguria, nec sit maleficus. 11. Nec incantator, nec qui pythones consulat, nec diuinos, aut quaerat a mortuis ueritatem. 12. Omnia, enim haec abominatur Dominus, et propter istiusmodi scelera delebit eos in introitu tuo. 13. Perfectus eris, et absque macula cum Domino Deo tuo. 14. Gentes istae, quarum possidebis terram, augures et diuinos audiunt : tu autem a Domino Deo tuo aliter institutus es.	Non inueniatur in te qui lustret filium tuum aut filiam tuam, nec diuinus apud quem sortes tollas : nec consentias uenenariis inpostoribus, qui dicunt, quid conceptum habeat mulier, quoniam fabulae seductoriae sunt. nec intendas prodigia, nec interroges mortuos. (Non inueniatur in te auguriator nec inspector auium nec maleficus aut incantator nec pythonem habens in uentrem nec haruspex nec interrogator mortuorum nec portenta inspiciens) : omnia namque ista a domino deo tuo damnata sunt et qui fecerit haec. propter has enim abominationes deus eradicabit Chaldaeos a facie tua. tu autem perfectus eris ante dominum deum tuum : Gentes enim istae, quas tu possides, auguria et sortes et diuinationes audiebant.	Nec inueniatur in te qui traducat filium uel filiam suam per ignem diuinationibus et ominibus (*al.* uel omnibus) auguriis et maleficis artibus et incantationibus non seruies, ut interroges magos et hariolos et mortuos, abominatio enim domini est omnis qui facit haec et propter has abominationes dominus deus tuus consumet eas a facie tua : perfectus eris cum domino deo tuo . . . gentes istae quas tu possidebis hariolos et diuinos audiunt, tibi autem non sic dedit dominus deus tuus. Augustinus Spec. c. 55 : Non inuenietur in te lustrans filium suum aut filiam in igne et diuinans diuinationem augurans et aruspicans et medicaminibus infuscans, incantator, uentriloquus et portenta inspiciens et interrogans mortuos : est enim abominandus domino deo tuo et omnis qui facit haec : propter has enim abominationes dominus eradicabit eos a te. tu autem consummatus eris coram domino deo tuo : gentes enim istae quas tu possidebis auguria et diuinationes audiunt, tibi autem non ita dedit dominus deus tuus.

VULGATE.	COLLATIO.	ITALA.
Num. xxvii. 2–11.	XVI., 1, 1 8.	Num. xxvii. 2 11. Ex Lugdunensi :
2. Steteruntque coram Moyse et Eleazaro sacerdote, et cunctis principibus populi ad ostium tabernaculi foederis, atque dixerunt :	Filiae Salfad adstantes ante Moysen et Eleazarum sacerdotem et principes omnemque senatum filiorum Israhel in foribus tabernaculi testimonii dixerunt : pater noster mortuus est et filii non fuerunt ei, sed filiae, et ideo non deleatur nomen patris nostri de medio tribus suae. non est ei masculus : date nobis possessionem in medio fratrum patris nostri. et obtulit Moyses petitionem earum coram deo. et locutus est dominus Moysi dicens: recte filiae Salphad locutae sunt : et ideo dabitis eis possessionem hereditatis in medio fratrum patris earum. et dices haec filiis Israhel : homo si decesserit et filium non habuerit . . . . . dabitis hereditatem proximo eorum de tribu eius : et possidebit omnia eius : et erit haec filiis Israhel iustificatio iudiciorum secundum quae constituit dominus Moysi.	Et accesserunt filiae Salpaat . . . . et stantes contra Eleazar sacerdotem et contra principes in omnem synagogam ad ostium tabernaculi testimonii dixerunt : pater noster mortuus est in deserto . . . et fili non fuerunt et non deleatur nomen patris nostri de media plebe eius, quia non est filius : date nobis possessionem in medio fratrum patris nostri, et obtulit Moyses iudicium earum contra dominum et locutus est dominus ad Moysen dicens : recte filiae Salpaat locutae sunt : datam dabis eis possessionem hereditatis in medio fratrum patris earum . . . et filiis Istrahel loqueris dicens : homo si decesserit et filios non habuerit . . . dabitis hereditatem domestico proximo ipsius de tribu ipsius et possidebit quae sunt ipsius, et erit haec filiis Istrahel iustificatio iudiciorum secundum quae constituit dominus Moysi.
3. Pater noster mortuus est est in deserto, nec fuit in seditione, quae concitata est contra Dominum sub Core, sed in peccato suo mortuus est : hic non habuit mares filios. Cur tollitur nomen illius de familia sua, quia non habuit filium ? Date nobis possessionem intercognatos patris nostri.		
4. Retulitque Moyses causam earum ad iudicium Domini.		
5. Qui dixit ad eum.		
6. Justam rem postulant filiae Salphaad : da eisis possessionem inter cognatos patris sui.		
6. Et ei in hereditatem succedant.		
7. Ad filios autem Israel loquéris haec.		
8. Homo cum mortuus fuerit absque filio, ad filiam eius transibit hereditas.		
9. Si filiam non habuerit, habebit successores patres suos.		
10. Quodsi et fratres non fuerint, dabitis hereditatem fratribus patris eius.		
11. Sin, autem nec patruos habuerit, dabitur hereditas, his, qui ei proximi sunt eritque hoc filiis Israel sanctum lege perpetua. Sicut praecepit Dominus Moysi.		

ADDITIONAL NOTES (JEWISH LAW).

NOTE ON TITLE III. DE SAEVITIA DOMINORUM (COHIBENDA).

In the treatment of slaves, Jewish Law (Biblical and Talmudical) stood on a higher plane than Roman Law. As we see from the Biblical text at the head of this title, the Hebrew master never had the *jus uitae necisque potestas*. A characteristic feature of the Mosaic Law, not noted in the Collatio, is that the infliction by the master of a permanent injury entitled the slave to freedom. "And if a man smite the eye of his servant, or the eye of his maid, that it perish, he shall let him go free for his eye's sake. And if he smite out his manservant's tooth or his maidservant's tooth, he shall let him go free for his tooth's sake" (Exodus xxi. 26-27). The Talmudical Law went still further in favour of the slave. According to the Scriptural text (Exod. xxi. 20-21) the master was not punished, if the slave did not die under his hand but survived for a day or two. According to the Rabbis, this was only so, if the instrument used was not a lethal weapon and the mode of chastisement was not likely to cause death; otherwise the master was liable for murder even if the slave died more than a year after the chastisement. (*Sifri* to the last weekly portion in the book of Numbers; Maimonides' Code, Laws of Murder, chap. ii., paragraph 10.)

According to the Talmud (T. B. Kiddushin 24 b) the slave obtained his freedom if he sustained a permanent injury inflicted by his master even *involuntarily*, e.g., if a physician failed to cure an ocular affection of his slave so that he lost the use of his eye.

Of course, these rules applied, it must be understood, to Gentiles who were acquired by capture in war or by purchase. A Hebrew could not become a slave to a Hebrew, but only a bondman, *liber seruiens*, for a definite period—six years or till the year of the Jubilee. A Hebrew might sell his services, or they might be assigned by the Court, in case he was unable to pay the value of what he had stolen (Exodus xxi. 1-6). "He shall serve him for ever" (*ibid.* v. 6) is explained to mean till the year of the Jubilee. The Biblical Law also gave protection to fugitive slaves: their surrender to their owners was forbidden. "Thou shalt not deliver to his master the slave which is escaped

from his master unto thee. He shall dwell with thee, even among you, in that place which he shall choose, in one of thy gates, where it liketh him best: thou shalt not oppress him" (Deuteronomy xxiii. 15-16).

NOTE ON TITLES VIII. AND VIIII.

To prove a disputed fact there must be at least two witnesses testifying to the same fact. "By the mouth of two or three witnesses the matter shall be established. It shall not be established by the mouth of one witness." The witnesses must not be blind, deaf, insane, or under the age of puberty (*Baba Bathra* 135*b*). They must not be open transgressors or people of disreputable character, *e.g.*, those who make their livelihood by dicing, usury, pigeon-flying (Mishna, Sanhedrin iii. 3).

Relationship to the parties to the suit, by blood, or (according to the later tradition) even by affinity, is a disqualification (Mishna, Sanhedrin iii. 4). According to the view of the Palestinian Talmud, *in loco*, witnesses must not be related to each other.

NOTE ON TITLE X.—ON DEPOSIT.

Four classes of *Bailees* are enumerated in the Mishna, *Baba Metzia*, vii. 8 and *Shebuoth* viii. 1: gratuitous depositary, paid depositary, hirer, and gratuitous borrower for use. The gratuitous borrower for use is liable for every kind of loss, even that arising from *uis major* (Exod. xxii. 10: "If it die, or be hurt, or driven away"). He is not liable if the destruction of the deposit is due to reasonable use, *e.g.*, if an ox, borrowed for the plough, died from work, provided it was not overworked by the borrower (Talmud, *Baba Metzia*, 96*b*); nor is he liable in any case, if the owner of the animal was with it during the time it was in the borrower's custody (Exod. xxii. 15: "But if the owner thereof be with it, he shall not make it good").

The gratuitous depositary is exempt from all liability, provided he takes an oath that he has not used the deposit or fraudulently made away with it, and it is not in his possession. "Then shall an oath of the Lord be between them both, that he hath not put his hand unto his neighbour's goods; and the owner of it shall accept thereof, and he shall not make it good" (Exod. xxii. 11). He is, however, liable if he has not put it in a safe place (*Baba Metzia*, chap. iii. 10).

The paid depositary and the hirer are liable for all losses, except those arising from *uis major*, or the act of God; *e.g.*, an attack by robbers or wild beasts, or fire (*Baba Metzia*, vii. 8).

It is to be noted that the rabbinical exegesis takes Exod. xxii. 10, 11 to refer to a gratuitous depositary; *ibid.* 12, 13 to paid depositary or hirer, and *ibid.* 14-15 to a gratuitous borrower for use.

NOTE ON TITLE XVI.

The order of succession in intestacy is: first, sons (eldest son taking a double portion), their descendants; daughters, their descendants. Failing issue, the father succeeds, then brothers (*Baba Bathra*, viii. 2). Sisters come after brothers and their descendants (*ibid.*). If a son dies in his father's life-time, grandchildren succeed to their father's share in the estate of their grandfather (*B. B. Gemara*, 122*b*). A man is his mother's heir, the husband is the wife's heir, but the wife is not her husband's heir. She has, however, her dower. Illegitimacy is no bar to inheritance or transmission. Recognition by father is accepted as proof that they are his children (*ibid.* viii. 6). Hotchpot was not recognised in Jewish Jurisprudence (*B. B.*, viii. 8).

SPECIMENS OF ORTHOGRAPHICAL ERRORS IN THE CODICES.

*Those marked * are also in the variants, where others of the same class will be found.*

Class of Error.	Reference. Page	Line	Berlin.	Vienna.	Vercelli.
a for *e*	62	19			**a*baristi
ae for *e*	62	15	optim*ae*		
	70	21	iust*ae*		
	70	21	cognosc*ae*		
	108	4			p*ae*nis (penes)
	118	20	uidilic*ae*t		
	128	24	*qui*ae*tem		
	130	21	nuperrim*ae*		
e for *ae*	passim		hec que etatis admisse	*also frequently in this MS.*	*also frequently in this MS.*
	68	26	cesus		
	78	26	quero		
	82	24	*flamme		*flamme
	62	6	pre *for* prae, *e. g.* preuita(praebita)		
	88	31	extimet (aestimet)		
	102	5	questum		
	120	8	queri		
	120	23	mansuete		
	126	23	iste		
e or *ae* for *oe*	88	4	obedire	obedire	obedire
	92	13		pena	
	94	19			p*ae*na
	98	8	penam		penam
	110	24	p*ae*na		
e for *a*	62	17		ietitur (iactatur)	iettitur
e for *i*	56	21			uendicari
	60	26			prestetit
	66	4	*cederet (sciderit)		
	76	19	treginta		
	84	23			impedet
	86	30	seuerissemae		

Class of Error.	Reference. Page	Line	Berlin.	Vienna.	Vercelli.
e for *i* (*cont.*)	88	18	preuigna		
	122	22	uindederit (uindiderit)		
	118	29	*tamen (tam in)	*tamen	*tamen
e for *o*	118	14	*precessit	*precessit	*precessit
ii for *i*	passim.		subiicio	subiicio	subiicio
i for *e*	72	16	dioclitiano		
	76	4			interficerit
	90	5	dirimerint	dirimerint	dirimerint
	102	27		susciperat	
	124	25	uindiderit		
	118	20	uidilicet		
i for *t*	86	7		*sancieque	
o for *a*	126	21			*obominationes
o for *i*	116	25	*doceret	*doceret	
o for *u*	76	8			calomniae
	78	30	poniatur		
	86	25	pecodum	pecodum	
	88	33	anolino		
	108	20	*pretexto	*pretexto	*pretexto
	116	12	ponitionum (puniti *in text*)		
	116	14	grado		
	120	4	fornum	fornum	
	128	15	contomacium		
	140	18	foriosus		
	128	5			seductos (sed uetus *in text*)
oe for *e*	96	11	poenes	poenes	poenes
	108	4			
	108	8			
	passim.				coep- *for* cep- (accoeperit, concoeptus suscoepisae, cet,) *etc.*
oe for *o*	66	4	*loeris		

Class of Error.	Reference. Page	Line	Berlin.	Vienna.	Vercelli.
oe for *u*	122	7		*inpo*e*nae	
u for o	56	7	sacerd*u*s		
	78	21			h*u*micidam
	78	30			h*u*micida
	120	4	c*u*mmunem		
	122	18, 19	fortuit*u*	fortuit*u*	
	126	17	*auguriat*ur*		
	126	19	interrogat*ur*		
	134	13	nep*u*s		praet*u*ri (praetorio, praetoriam)
	140	2			
	140	15			
ui for *i*	74	4	*dom*ui*		
Redundant or added Consonants.					
C	58	28		instrinc*x*it	
	88	24		deuinc*x*it	deuinc*x*it
	118	17	*uecturiae		
	124	24		*uinc*x*erit	
	128	8	*sic		
	60	17	siccariis		
	130	4		a*ff*ricae	
f	passim				necgleg
g	82	17		aggrestis	
h	86	22			
	86	25			
	86	27	*h*ac	*h*ac	*h*ac
	108	11			
	78	8	nec*h*isque (necisque)		
	82	14	arc*h*adius	arc*h*adius	arc*h*adius
	86	32		ante*h*actum	
	100	5, 6	co*h*ierit	co*h*ierit	co*h*ierit

Class of Error.	Reference. Page	Line	Berlin.	Vienna.	Vercelli.
h (*cont.*)	92	19			
	102	26			
	104	23	*h*is	*h*is	*h*is
	106	17			
	108	1			
	106	9	*h*ortum		
	106	9	*h*ordinem		
	122	4			
	110	18	*h*abigunt		
	114	24	*h*areas		
	116	4	*h*oliuarum		
	134	28		post*h*umi	
	passim.			ad*h*ire	
	frequently		co*h*erc-	co*h*erc-	co*h*erc-
l	92	15	*tello		
	118	14	**l*egit	**l*egit	**l*egit
m	114	1	consu*m*mi	consum*m*i	
n	64	23		man*n*umittere	
p	58	27			dam*p*natur
r	126	3	*uendided*r*it		
	128	31	**r*enuntiant		
s	134	22	*manu*s*		
	138	13	ex*s*tet		
	146	9		succe*s*dunt	
	64	12	*for*t*is		
	112	17		bet*t*icae	bet*t*icae
x	64	17			e*x*stimare
Omitted Consonants.					
c	68	13	*conple..ti		
	68	20	*ne..qua		
d	108	13	*a..misso		
f	86	22	*a..fectos		

Class of Error.	Reference. Page	Line	Berlin.	Vienna.	Vercelli.
f	94	22	ef..ractores	ef..ractores	
h	60	27	per..orrescat		per..orrescat
	60	27			contra..itur
	70	19			detra..i
	82	25			..ospitium
	86	33		..actenus	..actenus
	always		..adrianus		
	106	1	*..ermogenianus		
	108	26			*...orreorum
	126	18	*pit..onem		*pit..onem
l	98	8	*inf..igit		*inf..igit
m	102	28	com..endata		
	138	22	*com..entario		
r	82	17	*ag..este		
	90	12	er..orem		
	120	22	*euenire	*eueniri	*euenire
s	*passim*		exusit exuserit	exusit exuserit	
	72	23	*eduxerit		
	86	7	*con..titute		
	122	28	*tran..lata		
	138	11	..uperioribus		
	64	23	manumit..ere		
	80	17	*liber..os		
	116	22	remit..enda		
b for *d*	90	21	*a*b*stipulantibus	*a*b*stipulantibus	*a*b*stipulantibus
b for *p*	118	16	**b*abuli		
	60	19		o*b*tulerit	
b for *u*	60	17	**b*eneficiis	**b*eneficis	**b*eneficiis
	62	17			e*b*aristi
	70	2	se*b*itia		
	70	13			se*b*itia
	78	22	seruab*i*t		seruab*i*t
	88	16	a*b*ia		
	88	23	fa*b*ore		
	102	10		*b*ytricus	
	114	13	**b*erbicem	**b*erbicem	**b*erbicem
	128	27			di*b*us
	144	3	a*b*unculus		
	134	16	adoptibi		

Class of Error.	Reference. Page	Line	Berlin.	Vienna.	Vercelli.
c for *e*	128	5		*seductus (sed uetus)	*seductos
c for *g*	78	28	*ambicitur	*ambicitur	*ambicitur
	82	17			*acreste
	126	7		placiatores	
c for *h*	126	19	*caruspex		
c for *n*	94	18	*coctornique		
c for *qu*	106	14	*cominus	*cominus	*cominus
	116	14		*alico	
c for *t*	100	7	*cocta	*cocta	
ci for *ti*	80	19	inpac*i*entia		
	84	12	terc*i*o		
	92	17	lecc*i*o		
	96	7	acc*i*one		
	96	8			
	104	9	acc*i*onem		
	116	27			
	128	12	notic*i*am		
	132	4	contenc*i*osos		
	138	11	poc*i*or		
	138	17	poc*i*us		
d for *c*	132	1	*a*d*		
d for *cl*	62	15		*daudium	
d for *t*	passim		ad*d*que	ad*d*que	ad*d*que
	72	30			capu*d*
	68	8	inqui*d*	inqui*d*	inqui*d*
	90	24			
	104	18	a*d*		
	114	16	ad*d*tamen	ad*d*tamen	
	138	18	quo*d* quo*d*		
d for *u*	130	18	*d*eterioribus		
f for *d*	88	14		a*ff*inium	a*ff*inium
	100	10		a*ff*icitur	
f for *r*	88	32	*in*f*uere		

Class of Error.	Reference. Page	Line	Berlin.	Vienna.	Vercelli.
f for *s*	130	22			*perfida (Persica
g for *c*	60	5		*adfigi	*adfigi
	88	8	*negante (necante)		
h for *d*	128	10		*huiusmo*hi*	
	102	25		*h*omo	
i for *g*	124	26		*ingungitur	
m for *n*	72	10		co*m*pellere	
n for *r*	106	9		*n*ationе	
n for *rt*	98	21	*depo*n*antur (deportantur)	*depo*n*antur	*depo*n*antur
n for *s*	88	20		**n*anctum	**n*anctum
n for *ss*	66	7		*ce*n*at	*ce*n*at
n for *u*	128	6		ca*n*etur	ca*n*etur
n for *m*	72	7	*inpare*n*te (inparem te)		
p for *b*	136	29	*conso*p*rinos		
p for *c*	108	9	*dire*p*tam	*dire*p*tam	dire*p*tam
p for *d*	94	10		a*p*praehendere	a*p*praehendere
p for *u*	114	3	*inter*p*alam (interuallum)	*inter*p*ella	*inter*p*ella
ph for *f*	*always*			ne*ph*as ne*ph*arius	
qu for *c*	62	20	*qu*ohercendum		
	64	23			*qu*ogendus
	72	28	*qu*ohercendis		
	86	10			*qu*ohibenda

Class of Error.	Reference. Page	Line	Berlin.	Vienna.	Vercelli.
qu for *c* (contd.)	86	11		**qu*eortatur (cohortatur)	
	88	11		**qu*o nobis (conubiis)	**qu*o nobis
	104	3		*qu*o modati	
	122	19	**qu*oherceri		
qu for *f*	66	21		**qu*id (fit)	
r for *s*	68	4, 5	**r*extertiorum (sestertiorum)		
	76	19		**r*estersiorum	
	82	18		**r*egulis (saeculis)	
r for *st*	86	20		***hone*rate*	
r for *s*	88	29		**r*e ueritatem	**r*e ueritatem
	104	25		**r*emper	**r*emper
	118	17		**ar*tiliae	
s for *g*	112	8		abiseis	
s for *n*	122	27	**s*ummaria	**s*ummaria	**s*ummaria
s for *r*	104	7		**ues*titur	**ues*titur
ss for *r*	88	4		**obedis*s(a)e	**obedis*s(a)e
s for *t*	126	22	**s*ua		**s*ua
t for *d*	*always*		aput		
	106	23	qua*t*ratille		
	112	6		aliu*t*	
	138	1			
t for *i*	64	8	in*t*uria		
t for *l*	78	31	exi*t*ium		
ti for *ci*	passim		prouin*ti*a		
	58	9	condi*ti*onis	condi*ti*onis	condi*ti*onis
	62	7	suspi*ti*one		
	66	22	conui*ti*um		
	80	6	translati*ti*ae		
	104	3	iudi*ti*o		
	114	27	inimi*ti*tiarum		
	114	32	sar*ti*atur		
	130	16	pertina*ti*a		
ti for *cti*	76	1		iurisdi*ti*o	

Class of Error.	Reference. Page	Line	Berlin.	Vienna.	Vercelli.
u for *a*	126	24	°*u*uguria		
u for *b*	60	20		prou*u*auerit	
	62	6	preu*u*ita		
	72	4	preu*u*itis		preu*u*itis
	76	16	conu*u*io		
	82	24		*expiau*u*it	*expiau*u*it
	86	5	nou*u*ilissimorum		nou*u*ilissimorum
	104	17	ciuariarum		*ciuariarum
	104	18			
	104	18	inprou*u*e		inprou*u*e
	118	15	conprou*u*ata		
	120	13		sa*u*inum	
	130	12	prou*u*arentur		
u for *r*	140	4	*in*u*i*ta	*in*u*i*ta	*in*u*i*ta
x for *c*	58	27	*e*x* quo	*e*x* quo	*e*x*quo
x for *s*	64	17	e*x*timatur		e*x*timatur
	76	19	*se*x*tertiorum		*se*x*tertiorum
	80	5	*le*x* et (laesae)		
	88	30	e*x*timet		
y for *i*	138	16	s*y*rpes		
	104	17		*c*y*bariarum	
	102	10		b*y*tricus	

TEXTUAL VARIANTS.

ABBREVIATIONS.

a, *b*. Where added to Readings, *a* refers to the scribe's earlier, *b*, to his later reading.

1, 2. Where added, 1 refers to the scribe's reading, 2, to the correction by a later hand.

Bas	= Basilica. *	Hus.	= Huschke.
Beauv. Cod.	= Beauvais Codex (Bellovacensis).	Just. C.	= Justinian's Code.
		Lach.	= Lachmann.
Char.	= Charondas.	Mom.	= Mommsen.
Digest. V.	= Digestum Versio Vulgata.	Paul.	= Pauli Sententiae.
		Putean.	= Puteanus.
Flor.	= Codex Florentinus.	Schult.	= Schulting.
Hal.	= lectio Haloandrina.†	Theod. Cod.	= Theodosian Code.

* The Basilica, a Greek version of the Justinian Collections, with omission of redundances and additions, compiled by Basil and his son, Leo the Philosopher, at the end of the 9th and beginning of the 10th centuries.

† *Lectio Norica* or *Haloandrina* is a mixed text due to Gregorius Haloander (Metzler), the result of a collation of the Florentine with some of the oldest Vulgate MSS., aided largely by arbitrary conjecture, which was published by him at Nuremburg in 1529.

TEXTUAL VARIANTS.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 56.				
3. Liber primus	*omitted*		*omitted*	
7. Moyses		idem moyses		
haec	hac		hac	
8. hominem			homine	
mortem			morte	
9. si	sin			
manu		manum		
lapide	lapidem	lapidem	lapidem	
quo		quod		
10. mortem			morte	
12. iram			ira	
manu	manum	manum		
13. mortem			morte	
14. Paulus		*omitted*		
..... titulo				
15. ueneficis	beneficis	beneficis	beneficiis	
17. eiusque				eius uel (*Paul. MSS.*)
causa	causam		causam	
ue			uel	
cum		dum	dum	
et qui				quiue (*Huschke*)
18. causa			causas	
uendiderit		et uendiderit		
19. falsumue	falsumuae		(*a*) falsum uel	falsum (*Paul. MSS.*)
quo quis		quos qui		
periret,	perisset			
mortisue	mortis suae	mortisue	mortis suae	
causam				causas (*Paul. MSS.*)
20. quae.				ob quae (*Paul. MSS.*)
poena		poenam	paenam	
21. aut in				aut (*Paul. MSS.*)
22. subiciuntur				obiciuntur (*Paul. MSS.*)
23. Ulpianus libro VII proconsulis	proconsuli (*index*)		} ulpiani (*margin*)	
24. ueneficis		beneficis	beneficiis	
25. primo	primum	primae		
is	his	his qui	his qui	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 56—*cont.*				
26. iudexue	iudexuae	iudex uel	iudex uel	
quaestionis		questiones		
cui sorte	cui sortem	*omitted*	cui sorte	
27. Roma		romae		
propiusue	propriis	proprios	proprius	propiusue (*Schulting*)
passus		passuum		
factum	factus		factūs (*sic*)	
PAGE 58.				
1. uti quaerat	utique erat			
qui	cui			
ei		ea		
lege	legem			
sorte	sortem	sortem		
obuenerint		obuenerit	obuenerit	
2. hominis necandi			homines negandi	
3. causa			causam	
hominemue	hominemuae	hominem uel	hominem uel	
cuiusue	cuius			
dolo	dolum			
4. erit	fuerit			
5. Relatis uerbis legis	Relatis uerbis legi (*text*) legis (*index*)		} *omitted*	
modo ipse loquitur	modo ipsi loquitur		} *omitted*	
5–6. Ulpianus... .....omnem		Ulpianus *omitted*	(*b*) Ulpianus ... omnem(*all between omitted*; (*a*) *probably omits all*	
6. qui cum			quicūq cū (*according to Blume*)	
7. necandi			negandi	
causa	causam	causam	causam	
8. coercet	coerci	coherci	(*a*) coerci *** in hac (rest om.)	coercere (*Blume*)
conpescit	conpesci	compescit	(*b*) coercere ei in hac	
item eum qui hominem occidit nec	i. e. q. h. occidit coercit nec	i. e. q. h. occidit coherciti in haec		
9. adiecit	aiecit			adicit (*Hus.*)
ut et			ut	
10. pertinere	pertinet ire	pertinere	pertineret	
11. item			idem	
libro		liber		
qui supra titulo	quod supra tituiu (*index*)	quod supra titulus	quod supra	
12. mortisue	mortis suae		(*a*) mortis suae	
13. causam			causa	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 58—*cont.*				
14. de casualibus	item (idem, *index*) de causalibus	item de causalibus	item de causalibus	
homicidis		homicidiis		
16. subito inimicitias	*omitted*	inimicitiis		
17. insidians	insidiant	insidiauerit	insidiaris	
18. et mortuus	mortuus			
18-19. non inimicus eius fuerit	inimicus eius			
19. iudicabitis			iudicabitis et	
20. et proximum		et proximum et		
21. et		*omitted*	*omitted*	
22. relati	relato			
24. et qui	et qui (*index*), set qui (*text*), *according to Scaliger; now obliterated*	et qui	et qui	
25. occidit sed occidendi	cad (*index*)	occidenti	occidenti	scilicet (*Pith.*, *Hus.*)
26. admisit homicida		amisit homicidam	amisit	
27. e re ecquo	et re ex quo	et re ex quo	trem ex quo	ecquo (*Mom.*)
28. epafroditus gladium	ipsa funditus	ipsa fronditus	ipsafroditus gladius	epafroditus (*Blume*)
PAGE 60.				
1. quin occidendi si claue	qui non sic lapidem	qui non occidend. (*sic*)	qui non si lapis	si claue (*Digest*)
2. percussit aut cucuma aut cum forte rixaretur ferro percussit		*omitted*	p. aut (cuc. *omitted*) aut cum f. rix. ferro percusserit	*second* aut (*omitted in Digest*, *Hus.*)
3. occidendi mente et		occidendo mentem ut		
4. homicidam summo	cum	homicida eo	homicida eum	summo (*Mom.*)
5. affici	affici	adfigi	adfigi	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 60—*cont.*				
6. libro et	libro tertio quinto	liber tertius u. [= quintus]	libro tertio quinto	libro et (*Mom.*)
titulo		titulus		
qui	quod	quo	quod	
7-15. qui..... ...relegantur occidit				*To be found in Vallicelli Codex of Canons* occiderit (*Paul. MSS.*)
8. homicida non	homicidam	(*a*) homida	*omitted*	
9. si	*omitted*			qui (*Paul. MSS.*)
uellet	uelle			
casu				id casu (*Paul. MSS.*)
10. ut		et		
punitur	puniatur	puniatur	puniatur	punitur (*Paul.*), puniatur, *the Valli. Codex*
is	his	his	his	his, *the Valli. Codex*
11. [iactu] teli	teli	teli	teli	iactu teli (*Paul.*), telo (*Valli. Codex*)
ferierit				occidit (*Paul. MSS.*)
12. percussus homo		homo percussus		
perierit	fuerit	fuerit	ferierit	perierit (*Paul.*), fueri (*Valli.*)
ictus	iocus	botos	uotus	iocus (*Valli.*), ictus (*Digest*)
quoque ipsos	quoque ipso	ipsos quoque	quoque ipsos	quoque ipsos (*Valli.*)
13. unumquemque			unumqueque	
ludum			lutum	
14. damnantur	damnentur	dampnatur		
dimidia parte	demedia parte	dimidiam partem		
16. libro	libros (*index*)	liber		
IIII	IIII	IIII	IIII	xiiii (*Pith.*, *Hus.*)
[sub titulo]				sub titulo (*added by Mom.*)
legem	lege			
17. sicariis	siccari [is] ([is] *now obliterated*)			
ueneficis	beneficiis	beneficis	beneficiis	
18. Aurelio				(*omitted in Just. C.*)
Herculano	herculario	herculario	herculario	herculano (*Just. C.*) (*Basil*)
19 si se	si ne	siue	si rem	si se (*Just. C.*)
praesidi	presidi	presidis		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 60—*cont.*				
20. cui				qui (*Just. C.*)
animo iustam	iustam	animi iusta	iusta	Ἰοῦστον (*Just. C.*) (*Bas.*) hominem (*Just. C. MSS.*)
a se	a re	a re	a re	a se (*Just. C.*)
percussam			percussa	purcussum (*Just. C.*)
21. esse, remissa poena disciplinam militarem	esse remissam	*omitted* poenam militare	pęnam disciplina	
22. proferet	proferret	profert	proferre	proferet (*Just. C.*), feret (*Hus.*)
proposita	propositio	propositam	proposita	
prid. kl. febr. laeto bis cons.	prid. Kl Febru. letio uis conss	*omitted*	*omitted*	II. k. febr. laeto II. et cereali (*Just. C.*) (*Hal.*)
23. titulo et libro	et titulo et libro (*index*)	titulo (et libro *omitted*)	libro et titulo	
25. A Flauio	*omitted* fauio	*omitted*		
26. quo dolo	quod	*omitted* dolum	quo	
27. quippe ita si et	et si	(*a.*) qu(*)ppe si et ita	si et	enim (*Just. C.*)
28-29. ex improuiso casu potius quam fraude accidunt fato	*omitted*	ex improbis occasum p. q. fraudem a. foto	*omitted* improuiso c. p. q. f. accedunt facto	
30. prop. . . . . cons		*omitted*	*omitted*	
PAGE 62.				
1. tale		talem		
2-3. exemplum... n(obis)	quod si dnm habe agatu kn	quod si dnn habe gatu kn	quod si dnn habe agatu kn	*exemplum sàcrarum litterarum. Diocletiani et Maximiani A.A. Agatho (*Cas., while others have* agathocli *or* agathodi. *Just. C.*)

* *Mommsen says that his text is uncertain; but as the prescription in Justinian's Code was undoubtedly taken from the Gregorian Code, which was compiled under Diocletian, it is probably correct. The names of the Emperors were not given in the text; at least they could not have been written before* dd.nn. E(xemplum) s(acrarum) l(itterarum), *the first letters of these words may have been taken for* quodsi.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 62—*cont.*				
3. precum			pre eum	
4. facile		facilem	facilem	
homicidium	humicidium		humicidium	
se			sed	
5. uoluntate sed		uoluntatem		
casu			casum	
fortuito		fortuitu		
fecisse	fecisset	fecisset	fecisset	
calcis	calicis	calicis		
ictu	ictum	ictum	ictum	
6. occasio		occusu		
praebita	preuitat	praebuita		
7. omni eum	omnium	omnium	omium	eum ..... omni (*Just. C.*)
ac	hac	at		
suspicione		suspectionem		
quod				quam (*Just. C.*)
ex		*omitted*		
admissae rei		admiserit ei		
8. sustinet,		sustinere	sustine	
adnotatione		adnotatio	adnotatio	
9. Dat prid. k. Decemb.				*instead of* prid: III *or* VII (*Just. C.*)
9-10. Diocletiano Aug. IIII et Maximiano conss.	Diocletiano Aug. IIII. *obliterated*		*This* subscription *is omitted*	Sirmi ipsis A.A. IIII et III conss. (*Just. C.*) *Scaliger emends* Diocletiano Aug. III
11. libro		liber	libro *omitted*	
qui	quod	qui	quod	quo (*Char.*)
12. per	*omitted*			
lasciuiam		lasciuiam nimiam		
13. taurini egnati	taurini egnati	taurini heriati	taurini ergati	taurini egnatii (*Char.*) ignatii taurini (*Digest*)
Baeticae	ueticae	ueticae	uettice	
quinquennium		quinquennio		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 62—*cont.*				
14-15. uerba ... optime			} *omitted*	
15. consultationis	consultationis (*index*) consolationis (*text*)	consultationis		consultationis (*Charondas*)
habent	habentem	habentem		habent [uellem rescribas] (*Char.*)
Claudium	clodium	daudium		clodium (*Char.*)
16. imperator, et	imp.	imperatori	*omitted*	
euaristum	eu**ristum [1] euaristum [2]	euaristum	euaristus	
cognoui	cognouit			
Claudius	gladius			clodius (*Char.*)
Lupi	luppi		luppi	
17. iactatur	lactatur	ietitur	iettitur	iactatur (*Char.*)
culpa mari male	culpam manu mele	culpam a mario melle	culpa mari melea	culpa manu marii (*Ch.*)
18. morеretur		commoretur [1] commoraretur [2]		
19. nullam inimicitiam	nulla inimicitia			
cum euaristo ei	} cum ebaristi	euaristi	abaristi	cum euaristo ei (*Mom.*) cum euaristo (*Char., Blume*)
fuisse tamen	fuisset nec	fuisset nec	fuisse ne	fuisse tamen (*Mom.*), fuisse nec (*Char.*)
20. culpa	culpam	culpa	culpam	culpam (*Char.*)
credidi	crededit	crededit		
aetatis			eatis	
21. emendarentur ideoque Mario Euaristo urbe italia		emendaretur ideoque Mario et euaristo urbe italia	e (*all the rest omitted*)	
prouincia	prouintia		e prouincia	
22. Baetica quinquennium	ueticae	uetica quinquennio	uettica	
interdixi et	iterdixit	interdixit et	interdixit	interdixi (*Char.*)
decreui	decreuit	decreuit	decreui	decreui (*Char.*)
ut	et	et	et	et (*Char.*)
causa			causam	
23. duo milia				sestertium duo milia (*Hus.*)
patri eius		pari		*After* eius *Mommsen suggests that some such phrase as* quem interfecit *has dropped out*
euaristus	ebaristus		et baristus	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 62—*cont.*				
23-24. eius fuerat		fuerat eius		
24. u(erba) r(escripti)	uel res Kp dcvi	uel res uerba	uel res uerba	*See note, p. 6, l. 19*
poenam	uerba rescripti poenam	rescripti poenae	rescripti poena	
Mari Euaristi	mari ebaristi	marii et euaristi	mari aebaristi	
25. recte Taurine	recte et taurinae			recte egnati taurine (*Char.*)
es	est	est	est	
refert		referat	referent	
26. admittatur		amittatur	amittatur	
an	hanc	hanc	hanc	
casu		occasio	occasio	
27. distinctio haec poenam		{ districtio haec poenam / distinctio haec poena (*sic*)		distinctio haec poenarum (*Char.*)
aut		autem ante	an	
iustam	iustitiam	iustitiam	iustitiam	iustam (*Digest ân Blume*), iustitiar (*Char.*)
28. prouocare				elicere (*Digest, befor correction*), eliger (*Digest, after correc tion*)
aut temperamentum			autemperamentum	
29. modestinus libro...titulo		modestinus librum titulo	modestinus ... (titulo *omitted*)	
30. generaliter loquitur		(*a*) loquitur aliter		
31. delinquentibus		delinquentium		
ciuilis	ciuili	ciuiles		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 62—*cont.*				
32. uenia facti	pacto	ueniam facto	facto	
32-33. quae scilicet	qui scilicet	qui scilicet	quis licet	
33. consilio praestari		consilium praestare		
PAGE 64.				
1. addita distinctione	distinctionem	additam distinctionem		
1-2. sciente an ignorante	sciente ad ignorante		(*a*) scientiae an ignorantiae	
2. aliquo			aliquod	
3. libro et titulo qui	quod	liber et titulum quod	quod	
4. tutandae salutis causa		tutat de	tuta de causam	salutis suae (*Digest*)
gerit	ageret	gerit	gerit	gerunt (*Digest*)
uidetur hominis	uideatur	uideatur	uideatur homines	uidentur (*Digest*)
5. causa appellatione	appellationem	causam appellationem	appellationem	
6. omne	omnem	omni		
8. iniuria	inturia			
10. contenderint alter		unus	contenderit	
11. lapide decubuerit autem		lapidem et decubuerit		
12. foris	fortis	fortis	fortis	*Pith. in accordance with the Greek version*, foris
baculo accessationis	acessionis	accesionis	baculo suo (?) accessationes	baculo suo (*Hus.*)
14. ei curationis	aea	curationes		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 64—*cont.*				
15. U. libro singulari regularum sub titulo	U. libro regularis sub titulo (*text*) libro regulari sub titulo (*index*)	U. lib singulorum de sub titulo	*omitted*	
iniuriis	iuriis (*index*)			
16. iniuria		iniurias	*omitted*	iniuriam (*Hus.*)
grauis, non est	grauis rerum non	grauis est non	grauis est non	grauis non est (*Mom.*)
iudicis		iudici		
18. idque	adque			
colligi	(*a*) collegi (*b*) colligi	collegit	colligit	
ex		et		
uerberatus			uerberatur	
uel		aut		
quis	*omitted*			
20-21. Papinianus libro definitionum secundo sub titulo	papianus l. def. definitiorum (*index*) sec. sub tit.	papianus l. def. secundo sub titulo	Pap. l. def. (secundo sub titulo *omitted*)	
de iudicatis			de iudicatis personis	
22. hominem liberum		hominem liberorum	hominum liberorum	
noxae deditum	noxiae deditum	mox ad editum	mox editum	
23. quantum		quanti		
damni	damnum			
dedit		dedito		
24. praetore		praetutore et	pretor et	
noxae deditum	noxae taeditum	noxae deditum	noxa aeditum	
iudicio			iudici	
PAGE 66.				
1. ulpianus libro XVIIII ad edictum sub titulo		tituli	*omitted*	XVIII *in Digest* (*correctly*)
2. iniuria et cum diceret	iniuriam et cum diceret	iniuriam et cum dicere	iniuriam et cum diceret	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 66—*cont.*				
3. qui		qui autem		
4. uel loris pugnis caedit	uel loeris cedit	uel oriens pignus occidit	uel oriens occidit	cecidit (*Digest*); ceciderit *required by the construction*
4-5. uel telo quoue alio uis genere sciderit hominis	uel telo cum alio uis genere cederet hominis	uel telo cum alio uis genere occiderit hominis	uel telo cum alio bis genere occiderit hominis	uel.....hominis (*Lach.*) uel telo uel quo alio, ut scinderet alicui (*Digest*)
5. uel tumorem sed damnum	uel	uultumore uel si	uel	sed (*Digest*) d. iniuria (*Digest*)
6. ceterum si in nullo uiliorem	et cetero	cetero sin	cetero (*a*) nulco uiliorum	si (*Digest*)
6-7. deterioremue			(*a*) deteriorem uel	
aquilia	ad aquiliam	(*b*) ad aquilia (*a*) attaquilia	ad aquilia	
cessat		(*a*) cenat *or* cenas (*b*) cenas *or* cenat	cenat	
erit		rit		
8. pretio deterior factus seruus uerum		uerunt	pretium deterio uero	seruus factus (*Digest*)
9. salutem sanitatem nec uideri	salute sanitate uideri	alte sanite uideri	salte sanite uideri	nec *omitted* (*Digest*) uidetur (*Editors*)
10. damni aquilia lege				damnum datum atque ideoque lege aquilia (*Digest*)
[agi]	*omitted*	*omitted*	*omitted*	agi (*Digest*).
11. libro singulari et titulo	liber (*text*)	singulorum tituli		
12. dicitur iniuria	iniuriam	dscitur (*sic*)	dicit	
13. alia est	alia est	alia est	alia est	alias (*Inst.*); *and so in next line* alias (*Inst.*)
13-15. ὕβριν Graeci	*omitted*	*omitted*	*omitted*	*supplied from a similar passage Just. Inst.* iv. 4. pr.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 66—*cont.*				
15-16. ἀδικίαν uocant	adician uocant	adicent	adicent	
16. praetor non iure aduersum	noster aduersum	praeter noster aduersus	noster (*a*) aduersus (*b*) aduersum	non iure (*Inst.*)
pronuntiat	pronuntiaret	praenuntiat		
17. non	nos	nos	nos	
18. Labeo ὕβριν	hybrin	libet imbrim	labet ibrin	
19. commune omnibus iniuriis	communem omnibus enim iuris	communem omnibus enim iuris	communem omnibus enim iuris	commune omnibus iniuriis (*Lach.*). *He adds after* mores *in the next line* aliquid. *Mom. thinks this addition unnecessary.*
20. fieri edictum		fierit edictam	fierit	
21. eam fit fit		fit quid	ea	
22. inuria caedimur uerbis	iniuriam credimus	in uerbis		
23. uel dignitas ut matronae	uel patronae	dignitatem uel	(*a*) c uel uel	ut (*Digest*)
24. praetextatae abducuntur aut	pr(a)etextote adducuntur	adducuntur ad	pr(a)etextote	praetextato (*Hus.*)
PAGE 68.				
1. honoraria legitima lege	legem	honerariam legitimam legem		
2. iniuriam et uiginti sestertiorum	ex restertiorum	ex uirgiti resitrium	iniuria ex (*b*) sestertiorum (*a*) sextertiorum	
2-3. poenam subito	poena subit	poenam subit	poena subit	poena sunto (*Hus.*) poenam subito (*Mom.*)

Line and Word.	Berlin.	Vienna.	Vercelli..	Other Readings.
PAGE 68—*cont.*				
3. generalis fuit			generali fuit	
3-4. fuerunt et speciales uelut illa si os fregit	*omitted*	fuerint et speciales uelut manifestus fregit	fuerunt et speciales uelut manifestos fregit	fuerunt et speciales uelut si os fregit. (*Blume*); fuerunt et speciales uelut illa manu fustiue si os fregit (*Lachmann, Savigny Zeitschrift für gesch. Rechtswiss. 10. 311*). *Mommsen agrees with Blume, and rejects Lachmann's emendation on the ground that the XII. Tables would not descend to the detail* manu fustiue.
4. ccc [si] C. L.	trecentos *omitted*	ccc *omitted* ad	trecentos *omitted*	3. 223, at si (*inserted in Gaius*)
4-5. subito sestertiorum	subitor ex tertiorum	*omitted*	subitor ex tertiorum	
6. singulari sub titulo		singulorum sub titulo	*omitted*	
7. iniuriarum	iniuriam	iniuria	iniuria	
8. iniuriarum agit certum quid	iniuria aget qui	iniuriam c	iniuria qui	
9. iniuriae taxationem non minorem quam		iniuriam taxationum *omitted*	no minore	non maiorem (*Hus.*)
10. fuerit			(*a*) fierit	
11. demonstrat		(*a*) demonstram		
11-13. neque..... accidisse c. s. u. n. h. a. u. nomine suo rem designare	neque ..... accidisset c. s. u. n. h. a. u. nominis suo re destinare	se, *the passage omitted*	n..... accidisset c. s. u. n. h. a. u nomini suo rem destinare	designare (*Pith. on Dig.* 47, 10, 7 *pr.* 1)
13. conplecti	conpleti	conpleti	conpleti	
14. autem an		aut		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 68—*cont.*				
14. cognitio		cogitio		
15. est			*omitted*	
demonstrat	demonstrata	demonstrata	demonstrata	
16. agentis	ageretis	ageritis	ageritis	
17. se siue uerberatum	*worn away*	si sit uerberatus	si (*a* sibi) sit uerberatus	se uel uerberatum (*Hus.*)
et		ei		
demonstrat				demonstret (*Editors*)
18. in modum		in modo	immodum	
puta	puto	puto	puto	
lapide	lapidem	lapidem		
formula			formulam	
19. proposita	posita	proposita	proposita	
quod auli	qu. auli	*omitted*	qu. au.	quod a. a. pugno mala (*Pith.*); quod aulo agerio a numerio negidio pugno mala percussa est. (*Hus.*); mala pugno (*Mom.*).
ageri mala	agerii		ag.	
pugno	pugno mola		pugno mola	
percussa est	p. e.		per. est.	
20. cogitur			cogetur	
dicere	diceret			
sinistra	sinistram			
nec qua	nequa	neque	nequa	
manu		manus		
percussa sit	percussit	percussit	percussit	percussa sit (*Hus.*)
21. item	ita	ita	ita	
adicere	addiceret			
22. infamatus			(*a*) infamatum	
et		*omitted*	*omitted*	
formula	fermula			
Numerius	numedius	in numerio	nomedius	
23. Negidius	nigidius	nigidio	nigidius	
libellum misit	illum inmisit	illum inmisit	illum inmisit	libellum misit (*almost so Vonckius*); sillum immisit (*Arnaud*); sibilum immisit (*Hus.*); fimum immisit (Lenel Palingenesis 1, p. 1113.)
24. paulus	paulus (paulo *index*) l. s. [quinto *omitted*]	paulus liber sent. (quinto *omitted*)	*omitted*	
libro				
sententiarum				
[quinto]				
sub titulo ad				
24-25. legem corneliam				
25. ueneficis	benificis	beneficis	ueneficiis	
26. non			no	
caesus				laesus (*Pith.*)
27. aliquot	aliquos		aliquos	
diurnae	diuuternae			
decessit		cessit		
28. necem		uicem		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 70.				
2. Dominorum				*Hus. adds* (cohibenda)
4. aut		et		
uirga		uirgam	(*a*) uirgo (?)	
6. die		de die		
7. paulus libro sententiarum [quinto] s. t.	(quinto *omitted*)	liber (quinto *omitted*)	*the whole sentence omitted*	
7-8 a.l. corneliam				
ueneficis	beneficis	beneficis	beneficiis	
10. postulari		postulare		
enim		*omitted*		*In order to keep the reading* enim, *Momm. properly suggests addition after* temperari *of the phrase* sed tamen etsi eum dominus excessit, homicidium non commisit
et		*omitted*		
11. coercitione	quohercitionem	cohercitionem	cohercitionem	
12. ulpianus libro....titulo			*omitted*	
13. saeuitia	seuitias			
14. seruum				seruos (*Digest*)
inpudicitiam	pudiciciam			
14-15. turpemque			(*a*) turpequi, *according to Krüger*; (*a*) turpequu; *according to Huelsen*; (*b*) turpequae	
15. uiolationem		uiolentum		
conpellat		conpellant	conpellant	
sint		sunt		
praesidis		principis		
16. diui		*omitted*		
ad		*omitted*	*omitted*	
Aurelium		aurelii		aelium (*Digest*)
proconsulem	proconsole			
Baeticae	beticae	uettice	bettice	ueticae (*Digest*)
16-17. manifestatur				manifestabitur (*Digest*)
18. suos seruos	seruos suos		suo seruos [seruo *according to Krüger*]; (*b*) suos seruos	
inlibatam			inliuata	
nec	ne			
19. ne		nec		
20. saeuitiam		seuitia		
iniuriam			iniuria	
denegetur		denegentur		
21. qui	qui si			
eorum	illorum	eorum	illorum	eorum (*Digest*)
22. sabini		fauini	sauini	
confugerunt		confugerant		
si uel	siue	siue	siue	si uel (*Digest*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 70—*cont.*				
23. habitos]	habiti	abuti	abiti	habitos (*Digest*)
est	*omitted*	*omitted*		
infami	infamiae	infamem		infami (*Digest*, *V.*)
iniuria	iniuriam	iniuriam		
24. uenire	ueniri			ueniri (*Digest*)
iube ita	iubet	iube intra		iube ita (*Digest*); iubeta *Flor.* and (*V.*)
potestatem		potestate	potestate	potestate (*Digest*)
Sabini	sauini		sauini	
quod				qui (*Digest*) (*correctly*)
25. meae			me	
admissum			admissum hoc	hoc admissum (*Digest*, *Vulg.*)
26. diuus	diuis (*index*)		diuinus	
umbram				umbriciam (*Digest*)
matronam	matrona nam		matrona	
PAGE 72.				
1. in		*omitted*		
2. tractaret	tractare	tractauit	tractaret	tractasset (*Digest*)
item	item (*text*) idem (*index*)	idem item	idem	
2-3. diuus p. ad l. a. i. rescripsit in haec uerba	d. p. a. l. a. i. r. (in *omitted*) h. u.	d. p. a. l. a. i. scripsit (in *omitted*) h. u.	*all omitted*	
3-4. imperio sed et moderatione		imperium reddet moderationem		
5. debes	debet		debet	
6. temperate	temperare			
tuos	et uos	tuos	et uos	
ex facili	et facili	et facile	et facili	ex facili (*Lachmann*)
requirere				reprimere (*Lachmann*)
eos	eo	*omitted*	eos	
possis	possit	possis	possit	
ne si	nisi	nisi	nisi	ne si (*Pithou*)
7. inparem te	in parente	in parentem	(*a*) in parte (*b*) in parente	inparem te (*Pithou*)
inpendiis		inpendus [1]	inpendis	
7-8. atrociore dominationem	atrociorem dominationem	atrociorem dominationem	atrociorem dominatione seuitiam	atrociore dominationem saeuitia (*Lachmann*)
8. saeuitia	seuitiam			
habeat		habeas		
proconsul u. c.			*omitted*	
9. contra				contra te (*Lachmann*)
accidat		accedat	accedat	
et	se et			sed et (*Lachman*)
auctoritate		auctoritatem		*after* auctoritate, *Lachmann adds* te
10. Glabrione et	grauione et	grauione et	grauione et	
Homullo	romulo	romulo	romolo	
cons.		cons. x.	*omitted*	
11. libro	libro	liber	*omitted*	
XVIIII	XVIIII	XVIIII		
sub titulo	sub titulo	sub titulo		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 72—*cont.*				
2. impp.	impp.	impr. pp		
Diocletianus	dioclicianus	dioclicianus e.		
et Maximianus	e. Max.	m.		
Augusti	augusti	(augg. *omitted*)	*omitted*	
Aurelio	au.	au.		
Sacrato	sac.	sacrati		
3. militi	mil.	mil.		
[ui]	*omitted*	sacrati	*omitted*	
4. fati munus		(*a*) grauemur (*b*) fauemur		
implesse			inplisse	
4-15 castigationem			casticationem	
5. accusationem	causationem			
innocentiae	innotitiae		(*a*) innocitiae (*b*) innotitiae	
6-17 prop. n. D. D. A III e A cons.	prop. prop. n. D. Dioclitianus A. III et Aristone conss. IIII	*omitted*	*omitted*	
20. dixit		dicit		
21. moechatus			(*a.*) maeschatus	
fuerit	fieri (*Index*)			
mulierem	cum mulierem (*Text*) ; mulierе (*Index*)	cum mulierem	mulierem	
mortem			morte	
22. qui		que		
fuerit		*omitted*		
quae	qui	qui	qui	
moechata	moechatus	(*a*) moechatus		
23. aliqui	aliquis	aliquis duxerit	aliquis et duxerit	
seduxerit	aeduxerit			
desponsatam			sponsatam	
stuprauerit			(*a*) struprauerit	
24. dotabit	docuit	dotabit	dauit	
eam			*omitted*	
25. dare illi		illi dare		
inferet			inferret	
in				in *omitted by previous Editors*
27. Paulus	Paulus	Paulus		
libro	libro	liber		
singulari	singularis	singularem	*omitted*	
de adulteris	deadulteris (*text*) ulteris (*Index*)	de adulteris		
sub titulo	sub titulo	sub titulo	sub titulo de adulteriis	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 72—*cont.*				
28. interpretatio-nem	interpetrationem			
[legis Iuliae]				legis iuliae *added Huschke*
adulteris		adulterio	adulteriis	
28-29. coercendis	quohercendis			
29. per		in		
ipsa	ipsam		ipsam	
capita	capitam			
ire		rem	in re	
malui	maluit	mali		
30. (Iuliae de adulteris)			iulii	iuliae de adulter *Momm. suggests deletion.*
PAGE 74.				
1. obrogat	abrogat	abrogat	abrogat	obrogat (*Scaliger*)
patri	pater			
2. [si in]	*omitted*	*omitted*	*omitted*	
filia sua quam	filias suas quas	familias *omitting* sua quam	filias suas quas	
potestate	potestatem	potestatem	potestatem	
aut	ut	*omitted*	*omitted*	aut (*Pithou*)
ea quae		eam queque		
[eo]	*omitted*	*omitted*	*omitted*	
3. auctore			auctorem	
uiro	uero			
in manum conuenerit	in mano conuenerit	cum in manum uenerit	in mano conuenerit	
3-4. adulterum			adultero	
4. domi	domui	domus	domo	
deprehenderit	deprehenderet	depraehendens	deprehendant	
isue in	in quem	in quem	in quem	isue in (*Momm.*), isq in (*Schulting*)
eam		ea	ea	
5. socerum		socer		
ut is	ut his	ad hos	ad his	
eum	cum	cum	cum	eum (*Pith.*)
6. filiam in continenti occidat. in sui iuris autem	filiam in continenti occidat inuidia autem	filia in continentem occidat inuidia autem	*omitted*	filiam in contine occidat in sui iu autem (*Momm.*)
qui		si	si	
8. marcellus	marcellum (*index*)			
libro	libro xxxi. d.	liber.....	libro	
xxxi. digestorum scribit	scribe (*index*)	..... scribit	xxx. indegestorum scribet autem de	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 74—*cont.*				
9. auctoritate [legis]		auctoritatem		legis *added by Cujas, cp. line 14, where there is also the phrase* legis auctoritate
patrem posse interficere	pater interficeret	pater possit	pater	
consularem	cons.	(*b*) consultum const.	consst.	
10. uirum uel patronum [si eum]	uerum *omitted*	utrum et patronem *omitted*	uirum *omitted*	si eum (*Huschke*)
filia adulterum	filiam adulterium	filiam adulterium	adulterium	
12-13. sed solum ad. h. r. e. et si interuallo filiam interfecerit	interuallum filiam interficerit	*omitted*	interficerit	
13. tantundem est, nisi persecutus illam interfecerit:	tantunde est nisi persequatur illam interfecerit	tandem est nisi persequatur illam et interfecerit	*omitted*	tantundem est nisi persecutus illam , int. (*Hus.*)
14. continuatione auctoritate fecisse	continuationem auctoritatis fecisset	continuationem auctis	continuationem auctis	
15. idem ..... titulo			*omitted*	
16. uiro	uero	uero		
17. deprehensa uxore	deprehensam uxorem	deprehensam uxorem	deprehensam uxorem	
18. ergo leges		ego	ego	*Momm. would have preferred* legem
uiro domi	uero etiam domi	uirum etiam domui	etiam domi	domi (*Hus.*)
19. eum			eo	
20. auctoramento rogatus		auctoramentum rogatum	actoramento	
21. ut bestiis pugnaret		sunt bestias pugnare	besteis	
22. licet interficere deprehensum	licere	licere	licere *omitted* deprehenso	
23. et tam		etiam		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 74—*cont.*				
23. ciuem Romanum		(*a*) romano	ciue litinum	
24. Latinum sed et patris et matris			(*a*) et matris et matris	*Momm. follows Hus in pointing out tha* sed et patris..... occidere *should com after* paternum; *an then* et tam ciue Romanum quar Latinum *would be fo lowed immediatel by the explanatio* quo loco et dediticii habetur. *The clauses* sed patris...occidere *an* quo loco habetur. *are apparently take from a note on Pau*
et filii		filiis	filiis	
25. dediticius habetur	deditius haberetur	dempticius		
PAGE 76.				
1. iurisdictio occidit et	(*a*) ex	iuris ditionis occidi		
2. dimittere quod interficit	dimitteret	qua		interfecit (*Scaliger*)
3. diuum		quod	dum	*Mommsen prefers* diuc
Commodum rescripsisse	rescripsisset	quomodum	quomodum rescripsisset	
4. eum qui adulterum poena	p(o)enam*	cum in adulterium	eu p(o)enam	**The Berlin Code clearly has* poenam.
puniri		puniret	punire	
5. pepercit si qui inconsulto calore	eas	si [1] ei si [2] quid (*a*)inconculiscalo, (*b*) in conculis calculo	perpecit ei	
6. ducti interfecerunt		occulto loco reducti interficerent		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 76—*cont.*				
7. idem Paulus eodem libro singulari et titulo	libro *omitted* (*index*)	idem Paulus eodem libro et titulo	*omitted*	
8. iure mariti potest calumniae	qui iure marti	qui iure matris *omitted*	qui iure matri (*a*) causa	
9. poena accusat poena		poenam acuset poenam		
10. tum duos utiles	tantum duo	tantum utilis	tantum	tum (*Momm.*)
11. expertus alias ut	experitus alia	experitur alios aut	experitur aut	
12. aut infamis Ad	*omitted*	infamis (aut *omitted*)	infamis (aut *omitted*)	
13-14. ut et Papinianus libro xv scripsit. Papinianus libro xv responsorum sub titulo	ut et Papianus libro xv scripsit kp. DCXXVIII papianus libro xv responsorum sub titulo	ut et Papianinus l. xv responsorium sub titulis	*omitted*	
14. Iuliam	iuliani			
16. ciuis [ciuem Romanam] sine siue	sibi	ciuem	ciues me ciuem	ciuem Romanam *inserted by Momm.* ciuem uel (*Hus.*)
17. matrimonio iure	iutre		matrimoni	
18. ei opponetur	ea		opponatur[2]	
19. libertinus sestertiorum milium habuit	liberatinus sextertiorum	restersiorum milia	sextertiorum	habeat (*Editors and Hus.*)
20. propriam persequenti		(*a*) proprium consequenti		
21. qui supra	*obliterated*	quod super	quod	quo (*Hus.*)
22. adulterium iure	adulterum		adalterium iuri	
23. sponsam				in sponsam (*Editors*) (in) sponsam (*Hus.*)
seuerus rescripserunt		reuersus rescripserit		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 78.				
1. Papinianus	papianus		papianus	
singulari			singulas	
de	*omitted (index)*			
2. emancipatam	emancipata	emancipatum	mancipatum	
3. possit			posse	
respondi	respondit	respondeo		
eam			ei	
4. [quae]	*omitted*	*omitted*	*omitted*	
eo	eum			
auctore	auctorem	auctorem	auctorem	
4-5. in manum		in in manu	in manu	
5. emancipatam	emancipatum		mancipatam	
6. pater prohibetur		patris prohibet		
7. Papinianus	papianus	Papinianus libro et titulus	papianus	
eodem	e.			
libro	(l. *omitted*)			
singulari				
	s.			
(et titulo)	e. t.			et titulo *should be omitted. as nowhere else, in citing this work, is a* title added (*Momm.*)
8. lex		hec lex	ex lex	
necisque	nec hisque	nec hisque		
9. lege conprehendi	legem comprehendit			
10. uelis	uelle	uelle	uelle	uelis (*Hus.*)
10-11. nam scire cupio. Respondit		(*a*) *omitted*		
12-13. [sed occidi eam cum adultero iussisse]				sed.....iussisse *supplied by Momm.* occidendi potestatem sed necessitatem imposuisse, *supplied by Hus.*
13. maiore aequitate	maiorem aequitatem	maiorem aequitatem		maiore aequitate (*Hus.*)
14. occidisse	occidisset			
16. si			sic	
quis	qui	qui	qui	quis *Schul.; others delete either* qui *or* et
adulterum	adulterium (*index*)			
17. respondit		R̄.		
18. tenebitur		tenetur		
lege cornelia	legem corneliam	legem corneliam		
19. filia	filiam	filiam		
uoluntate		uoluntatem		
casu			causu	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
AGE 78—*cont.*				
0. fugit	*omitted*			*Hus. omits* filia *and puts* quod forte fugit *after* casu seruata est, *line 19*
filia	filiam			
1. punit	ponit			
2. pater			patrem	
uoluit, sed	uoluisset qui			
quia				
4. Idem	papianus idem		*omitted*	
5. adulterio			adulterium	
deprehensam	deprehensum			
occidit			occiderit	
6. legem	lege	lege	lege	
incidat	incidit			
respondit		R.		
nulla parte		nullam partem		
7. aperte	a parte			
8. legem		lege		
fecisse	fecisset			
non	non dubitantur	non dubitantur	non dubitantur	*after* permittitur, *line* 29
ambigitur	non ambicitur	non ambigitur	non ambigitur	*the Berlin text has* ambigitur sic dicit non dubitantur
poena	ponat	poena sin		
9. inique	hisquae	idque	idque	Inique (*Od. Mueller*)
honestissimo	honestimo			
permittitur	permittetur			*See above, line* 28
non		*omitted*		
0. deportatione		deportationem		
1. exilium	exitium	exitum	exitum	
poena eius		poenas		
statuatur	statuitur	statuitur	statuitur	
AGE 80.				
1. idem sic	idem si (*Index*)	idem si	idem si	
	item sic (*Text*)			
alterutrius	alterius			
marito	maritu (*index*)			
accusante		accusantem		
2. est	esse	esse	esse	est (*Schulting*)
3. respondit	respondit	R.	respondit	
potest		potes		
uideri		uidere	uidere	
ea		eam		
5. diligentius		diligens suum	diligens suum	
laesae	lex et		leseo	
6. translaticie		translatici et		
persequeren-		persequentur		
tur				
tale		talem		
7. ministerio		misterio		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 80—*cont.*				
7. est eo perduxit		*omitted* eum adduxit		
8. ut etiam accusante mancipia		accusantem mancipio	ut etiam ut	
9. a			ad	
10. Paulus libro sententiarum [secundo] sub	Paulus liber sent. (secundo *omitted*) sub	Paulus libro sent. (secundo *omitted*) sub	*omitted*	
11. permittitur				*Before* permittitur p *Paul. has* cap secundo legis Iu de adulteriis
[patri] quam naturali adulterum	*omitted* *omitted* (*a*) adultero	*omitted* tam	*omitted*	patri *Paul.*
12. filia cuiusque domi sui		filiam domui	 domus	 cuiuscumque (*Paul.* *omitted in Paul.*
13. sua manu familias pater si adulterio	 familiae	suam manum	 manum familiam si pater adulterium	*omitted in Paul.*
14. prope est			(*a*) propest	
15. permittitur tamen etiam ei maritus			 marito si (*a*. sii)	permitti tamen ei de (*Paul.*), permitti men etiam ei de (*Hus.*)
16. deprehensos corpore		deprehensus corpori	deprehensus	
17. quaestum faciunt et libertos	questium et liberos	 habent et liberos	questium et liberos	et libertos (*Pit* (*Paul.*) *Codex* *sontin. omits* libertos

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 80—*cont.*				
17. uxore		uxorem		
18. maritum deprehensam	maritus deprehensum	maritus	maritus	maritus (*Paul.*)
19. inpatientia	inpacientia	inpatientiam		
22. inuenta in uxore	inuentam uxorem	uxor		
23. maritus adulterum	adulterum maritum	maritum adulterum maritum	adulterum maritum	} *omitted* (*Paul.*) adulterum (*Paul.*)
eum domi	domui	domui	domui	
24. qui			que	
25. dimiserit				dimisit (*Paul.*)
26. tam adulteri	adulterii	adulterii	ta adulterii	adulterii (*Hus.*)
27. sub specie data ualebit	datam	malebit	datam	sub spe (*Pith.*); suspectae (*Hus.*)
PAGE 82.				
4. manserit mansione muliebri asperna-mentum	mulieri (*Index*)	manserint mansionem lepernamentum	apernamentum	
5. moriantur rei		quia rei	moriatur	
6. Paulus libro sententiarum II. sub titulo de adulteris	II. (*omitted in text*), *given in index*	idem (*omitting the remainder*)	item de adulteriis	
7. stuprauerit punietur		puniatur	strupauerit puniatur	punitur (*Paul.*)
8. uoluntatesua stuprum			uoluntatemsuam struprum	
8-9. dimidia parte		dimidiam partem	dimidiam partem	
9. multatur		multarum		
10. parte		martem		
12. constitutio cognoscitur			costitutio (*a.*) cogooscitur	
12-13. (item Theodosianus)	idem theodosianus (*Index*)			

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 82—*cont.*				
14. Impp. Valentinianus Theodosius Arcadius Auggg	ualentianus augg̅	imperatoribus ualentiniano theodosio archadio aggg̅	aag̅	
15. Orientium patimur	patiamur		orentium	
15-16. urbem Romam uirtutum	urbis Romae uirtutem	urbis Romae uirtutem	urbis Romae uirtutem	
16. diutius effeminati uiro	uiros	uiros	diutium et feminati uiros	uiro (*Mom.*); uiros (*Hus.*)
16-17. contaminatione		contaminationem		
17. agreste illud a priscis	ageste ad	aggrestis illum hac pristis	acreste illum	
17-18. robur fracta		robor facta	robor facta	
18. plebe		plero	pleue	pube (*Jac. Gothofredus, Hus.*)
saeculis conditorum	seculi	regulis	(*a.*) conditurum	
19. principum	printipium	principium	principium	
19-20. orienti k(arissime) ac iuc (undissime) nobis	orienti kp. dcxxx viiii ac iuc nobis; (*index*), orienti; ; , , , kp. dcxxxviiii ac iuc nouis (*text*)	orienti (*all the rest omitted*)	orienti (*all the rest omitted*)	orienti k(arissime) ac iuc (undissime) nobis (*Mom.*)
20. laudanda igitur experientia tua		idem	*omitted*	*omitted* (*Theod. C.*)
omnes quibus flagiti usus	flagitiosus luxus	omnibus flagitiosuslus	qui ius flagitiosus luxus	flagitiosus luxus (*Hus.*) flagiti usus (*Theod. C.*)
21. uirile muliebriter sexus	uiri	uirili muliebriliter sexu	uirili	uirile (*Theod. C.*)
22. patientia nihilque discretum		patientiam nihilque discretu	patientiam	nihil enim d. uidentur (*Theod. C.*)
22-24. occupatos, ut fl. poscit i., a. omnibus eductos, p. d. u. lupanaribus	o. ut. fl. p. (possit *in a.*) a. o. seductos p. d. u. lupanaribus	occupatus ut. fl. p. i. a. o. (*a.*) seductus (*b.*) seductos p. d. u. l.	seductos	*instead of* occupatos . . . . . lupanaribus *Theod. C. has* huius modi scelus.

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 82—*cont.*				
24. flammae expiabit	flamme	flammas expiauit	flammae expiauit	flammis (*Theod. C.*) expiabunt (*Theod. C.*)
25. intellegant sacrosanctum	sacrosanctis	sacrasanctis	intellegat sacrosanctis	
26. sexum	(*a*) se sexum (?)			
27. perdidisset prop. pr. id. maias romae	 prop. prid.	(*a*) perdixisse (*b*) perdidisse propriae (*a*) maas	 propridiae maiias *omitted*	pp. in foro Traiani viii. id. Aug. Valentiniano Aug. iiii et Neoterio cons. (*Theod. C.*)
28. atrio mineruae	minere	atrium minerue	 minerue	
PAGE 84.				
4. muliere uxore	mulierem uxorem	mulierem uxorem	 uxorem	
4–5. pudenda patris sui		pudendam	 *omitted*	
6. nuru sua moriantur		nurum suam	nutru moriatur	
8. Ulpianus libro regularum singulari sub titulo de nuptiis	U. l. regulari de nuptiis sub titulo	U. l. singulari nuptiis sub titulo	U. l. singulari de nuptiis titulo	
9. liberos sint	sit	sit	sit	liberos infinite (*Ulpian*) sit (*Ulpian*)
10. cognatos transuerso		cogatur	cogatur transuersu	
11. non poterant		competerant		
12. autem tantum				autem etiam (*Ulpian*) tamen (*MS. of Ulpian*)
13. filiam sororis nec amitam nec materteram	filia mater terram	filia amita matertera	filia matertera	 sororis filiam (*Ulpian* aut (*Ulpian*) uel (*Ulpian*)
14. sint eam quae		ea	ea	sit (*Ulpian*) eadem (*Ulpian*) quae (*omitted by Ulpian*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 84—*cont.*				
15. quae		quem		
uel socrus		*omitted*		
fuit				nostra fuit (*Ulpian*)
uxorem				uxorem *before* nouerca *in previous line* (*Ulpian*)
16. eam		ea		
quam		(*a.*) quam *omitted*		
incestum matrimonium		incertum	incertum matrimonio	
17. contrahit		contrahi	contrahi	
liberi	liberis			
potestate			potestatem	
eius	eis	eis	eis	eius (*Ulpian*)
19. Paulus libro sententiarum [secundo]sub titulo de nuptiis	paulus liber sententiarum de nuptiis sub titulo	idem de nuptiis sub titulo	de nuptiis	
21. filiam			filia	
uxorem			*omitted*	
22. possumus	non possumus	non possumus	non possumus	
proneptem	pronept(a)e		pronept(a)e	
23. cognatio		cognati		
24. ac	hac	hos	hac	
non			*omitted*	
25. nec socrum		non socrum		
[nec] priuignam	nec *omitted*	nec *omitted*	nec *omitted*	
26. incesti		incerti	incerte	
ducere				dicere (*Hus.*)
27. materteram			matertera	
sed qui uel	sed uel		sed uel qui	qui affinem uel (*Hus.*)
28. remisso	remissio			
mulieri iuris	mulieris iuris	mulieri sorore	mulieris errore	
errore	errore			
29. lege iulia	legis iulia	legem iuliam		
ducta	ductam	ductam	ductam	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 86.				
1. quinto sub titulo de nuptiis	(*index*) *omitted* de nuptiis sub titulo	de nuptiis sub titulis	de nuptiis sub titulo	
2. Diocletiani impp. talem	dioclitiani	imperatoribus tali	dioclitiani	
3. punire commemorat	puniri	puniri (*a*) commerant *b* commemorant	puniri	
4. Diocletiani maximiani	dioclitiani (*text*) dioclisiani (*ind*)	diodetiani	dioclitiani (*a*) maximini	*Just*, C. *has* impp. diocletianus et maximianus A. A. et. Caess.
4-5. [Augg. et constantii et maximiani]	*omitted*	*omitted*	*omitted*	
5. piis		quis	quis	
6. religiosis		relegis his		
7. sancteque constituta	contitute	sancieque		
8. quibusdam		quibusdum		
9. incesteque oportere		incerteque opponere	incerteque	
10. cum	aeum			
11. nos disciplina cohortatur	non	disciplinam queortatur		
12. deos Romano		romanis	deus	
fuerunt	fuerint	fuerint	fuerint	
13. placatos futuros	(*a*) placatus futurus	placatus futurus	futurus	
13. cunctos			cuncto	
14. nostro agentes	nostro gentes	nostram habentes		
14-15. religiosamque et quietam et castam in omnibus mere colere perspexerimus uitam	religiosasquae et quietem et castum in o. more c. p. u.	r. (et *omitted*) qu. et castam nominibus more c p. u.	r. et quietem (et *omitted*) c. in o. more c. p. uitia	religiosamque uitam et castum in omnibus morem colere perspexerint assuetum (*Hus.*); religiosamque quietam et castam in omnibus more colere perspexerimus uitam (*Blume*). mere (*Mom.*); more maiorum (*Cujas*)
17. religiose atque ueteris		religionem uestri	religione que uestris	
18. honestati	honestatum *nearly obliterated in MS.*	honerati	honorati	honestatem (*Scal. Apograph*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 86—*cont.*				
18. coniunctionem	coniunctione		coniunctione	
19. qui inde deinceps	qui cum deinceps	qui deinceps	qui cum deinceps	qui inde deincep (*Mom.*)
nascentur seruata religione	seruata religione nascetur	seruata religionem nascentur	seruata religione nascitur	nascentur seruata re ligione (*Mom.*)
20. honestate		honerate		
21. id sancta	sanctae	ita sanctus	(*a*) idco (*b*) ideo suprascripte	sancta (*Cujas*)
22. nomina optineant affectus	afectos	nomine effectos	nomine optineamus defectos	
23. consanguinitati	consanguinitatis	consanguinitatis	consanguinitatis	
24. [duratura]ea constat	ea	ea constant	ea	
25. promiscuo ritu		promiscui oritur	promiscuo ritum	
26. instinctu execrandae	instinctum exercendae	instinctum exercendae; (*a*) exercere	instinctum exercendae	instinctu execrandae (*Schult.*)
sine respectu		ne	ne respectum	
27. quaecumque			quicumque	
28. inperitia ignorantia	inperitiam	peritiam ignorantiam	peritiam	
29. ritu matrimoniis admissa	ritum matrimonii si	adimissa	admissam	
30. seuerissime uindicanda	uidicanda		uerissime	
contemplatione	contemplationem	contemplationem	contemplationem	
32. ante incestisque se		incertisque *omitted*	(*a*) *omitted* re	
33. adeptos esse		ademptos essent	ademptos	
34. indulgentiam sciant	indulgentia sciat			
post tam uitam		post iam uti eam	posita uita	
PAGE 88.				
1. sibi esse concessam sciant tamen non legitimos		esse c. sc. tamen non legitimos *repeated*	sibi quidem legitimo	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 88.				
2. quos			cons	
tam		tamen		
coniunctione	coniunctionem		coniunctionem	
genuerunt		genuerint		
3. infrenatis	inefrenatis	ineffrenatis	ineffrenatis	effrenatis (*Hus.*)
4. oboedire		obediss(a)e	obediss(a)e	
5. uenia	ueniam	ueniam	uel	
liberatos		liberaris	libertos	
quos	quod			
genuerunt		genuerint	genuerint	
6. successione		(*a.*)successionem (*b.*) succession-emne		
arceantur	careatur	caretur	caretur	arceantur (*Puteanus*)
8. et			*omitted*	
optassemus		optaremus	optaremus	
nec ante	negante			
eius modi		huiusmodi		
9. esset	esse	esse	esse	
clementia		clementiam	clementiam	
10. corrigendum		succurrendum		
sed	sed et	sed et	sed et	sed (*Mom.*)
posthac	post hanc	post hanc	post hanc	
10-11. religionem			religione	
sanctitatem-			scitatemque	
que in conu-		quo nobis	quo nobis	
biis				
copulandis			copulandi	
11. se			rem	
14. numero		numerum		
15. matri-			(*a.*) matromonio	
monium			(*b.*) matriomonio	
edicto		edicti		
16. pronepte	} proneptemque	} proneptite		
itemque		itemque		
matre			mater	
proauia	prohabiae			
17. sorore	*omitted*	*omitted*	*omitted*	sorore (*Just. C.*)
ex			et	
18. socru nuru	socrus norus	socrus nurus nurum	socrus nurus	nuru socru (*Just. C.*)
ceterisque		ceteras		
quae				

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 88—*cont.*				
19. antiquo iure uolumus				iure antiquo (*Just. C.*) se uolumus (*Just. C.*)
20. sanctum uenerabile	hanc tantum (*a.*) uenerabile (*b.*) uenerabiles	nanctum uenerabiles	nanctum uenerabiles	sanctum (*Putean.*)
21. romana maiestas	romanam gesta			
numinum	non mirum	nominum	nominum	numinum (*Putean.*)
22. suas religione	sua	*omitted*	religiones	
23. pudorisque obseruatione		pudorisqui obseruationem		
24. uenia quae	uenia	ueniam		
25. indulta		iudulta		
26-27. quae in diem III kal. Ian. Tusco et anullino cons. uidentur	que in diem tertio kł ianuariorum tusco et anulino (*a.* anulio) conss. uidentur	que in diem tertio kł ianuariarum tusco et anulino conss. uidentur	*omitted*	
27. esse commissa qua	esse commissam	esse commissa quis		
28. nominis sanctitatemque	numinis sanctitateque		nomine	
29. deprehendentur admissa	deprehenduntur	deprehenduntur amissa	deprehenduntur	
seueritate plectentur nec enim	seueritatem	re ueritatem flectentur neque	re ueritatem	
30. ullam nefario quisquam se	nullum	nullam nephariae quicquam re	nullam	
31. tam euidenti crimini	tam euidenti crimen	in tam euidentur crimen	in tam euidenti crimen	
32. dubitabit inruere	infuere	dubitauit	dubitauit	
32-33. Mai. Damasco Tusco et Anullino cons.	maias damasco tusco et anolino consł.	madias *omitted*	magias damasco et tusco	*Wanting in MSS. of Just. C.*

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 90.				
1. Hermogeniānus sub titulo de nuptis	Ermogenianus sub titulo de nuptis	*omitted*	de nuptiis	
2. Impp. Diocletianus Maximianus Augg. Fl.	Impp dioclitianus Maximianus agg. ft.	imperatoribus diodetiani maximiani augustos (fl. *omitted*)	a. (fl. *omitted*)	
3. His incestas		*omitted* incertas	incertas	
4. clementia		clementiam	clementiam	
5. quam rescierint ilico		cum (*a.*) rescirent illi quoque		
5-11. Prop. id. Mart. [Tiberiano] et Dione cons. Hanc qu. c. G. t. d. n. in. qu. e. t. et s. a. t. et die [et cons.] i. e. . . . . adulteris	prop. id Mart et diogene cons. hanc. . . . . die (et cons *omitted*) id est c. p. V id. Iun. dioclitiano . . . . . adulteris (adulterii *index*)	idem	de adulteris	
12. qui filiam uxorem duxerat per errorem	que u. d. p. erorem	per errorem uxorem duxerit	filia	
13. praeueniretur a delatore, diremit coitum	peruenirētur dirimit cohitum	ahelatiorem dirimet choitum	a delatorem dirimitum	
14 respondit ei coitu	et coniunctae	R. et coniunctae	et coniunctae	coitu *Mom.*)
15. errore diremit coitum	errorem	errorem dirimit	errorem coitu	
16. creditur uoluntatis			creditor uoluptatis	
17. gradu tale	grado talem	gradum talem	talem	
18. dicitur in eos, qui incestas		incertas	de his incertas	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 90—*cont.*				
19. incesti legem	incestis lege	incerti	incerti	
20. nutu	(*a*) nuto (*b*) noto			
isdem		hisdem	hisdem	
21. adstipulantibus	abstipulantibus	abstipulantibus	abstipulantibus	
24. uxore	uxorem	uxorem		
25. patris	patri			
PAGE 92.				
1–2. sorore . . . ...concubuerit cum		*omitted*		
1. dicit			dicet	
2. nuru	nura			
3. dicit			dicet	
4. socru	socrus			
dicit			dicet	
5. sorore		sororem		
dicit			dicet	
6. sorore		sororem		
7. concubuerit		dormierit	dormierit	
8. sorore uxoris		sororem (*a*. uxorem) sororis		
dicit			dicet	
9. uxore		uxorem		
omnis	omne			
10. pecore		pecude		
dicit			dicet	
14–15. [quoquo modo diurnum]	*omitted*	*omitted*	*omitted*	quoquo modo diurnu (*Blume*)
15. autem si se audeat	autem si se aut	aut ensis se aut	aut tensis se aut	autem si se audea (*Schult., Blume*)
telo	tello			
defendere		defenderit	defenderis	
16. scitote		sitote		
consulti		consultum		
sicut	si cui	si cui		
17. manifestat		manifestas		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 92—*cont.*				
18. nocte			noctem	
18 19. fur et percusserit eum alius et mortuus fuerit	furem percusserit	fur percusserit	*omitted*	
19. hic	hi	hi		
20. fuerit mortis	*omitted* morti		morti	
21. morietur			moriatur	
22 23. Paulus libro sentertiarum V ad legem Corneliam de sicariis et ueneficis	(liber *index*) beneficis	a legem beneficis	(*a*) idem *omitted*	
24. cum defenderet	defendere	con defendere	defendere	
25. occiderit lege qui		legem si	occiderit eum si	
28. Ulpianus libro xviii ad edictum sub titulo quadrupes	Ulpianus libro viii (*text and index*)	Ulpianus libro viii . . . . . tituli quadrupedem	idem	octauo decimo (*Digest correctly*)
30. iniuria adicitur	iniuriam	iniuriam adigito	iniuriam adigitum	
PAGE 94.				
1. iniuria id esse	iniuriam	iniuriam adesse	iniuriam	
2. [iniuria]	*omitted*	*omitted*	*omitted*	
3. quemcumque alium qui	quicumque	quicumque alio	quocumque	si quemcumque (*Digest*) quis (*Digest*)
4. iniuria occidisse	occisisse	iniuriam occisisse	iniuriam occisisse	
6. aeque permittit sed ita demum	aeaque sed ita lex demum	eaquae sed ita lex demum	ea quem permitti sed ita lex demum	aeque (*Cujas*) *perhaps the original had* necare permittit sed ita demum lex *instead of* aeque... demum
7. defendat an lege	defendatur legem	a [1] si a [2]		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 94—*cont.*				
7-8. et Pomponius dubitat num haec lex non sit in usu	nunc haec lex,	idem	et Pomponius deuitat nunc haec lex, n. s. i. u.	*Hus. omits* non
8. et si quis noctu		si	idem si	metu quis mortis (*Digest*)
9. furem dubitamus quin lege Aquilia [non] teneatur	qui in *omitted*	fuerem [1] qui in legem Aquiliam *omitted* teneatur uideamus [2]	qui in *omitted*	dubitabitur (*Digest*) non (*Digest*)
11. iniuria etiam lege cornelia		iniuriam legem corneliam		et (*Digest*) lege (*omitted Digest*)
12. accipere hic oportet non et		oporteat	non *omitted*	hic accipere (*Digest*) et *rightly omitted in Digest*
13. iniuriarum quod	iniuriam	iniuriam	iniuriam *omitted*	
14. factum est, contra ius, culpa	factum contrarius	factum culpam		
16–17. ulp...tit. de furibus		idem	idem de furtibus	
18. forum nocturnique	furtum coctorniquae	furem quodturniquem	furem et nocturni qui	forum (*Pith.*) nocturniquoque (*Hus.*) nocturnique (*Blume*) nocturni (*the preceding phrase omitted*) (*Digest*)
19. ordinem dummodo in	dum	dum modum	ordine dum modum	dummodo in (*Digest*)
20. sciamus				sciamus (*after* dummodo *in Digest*)
publici temporari non egrediendum	temporarium	publicis temporalium monendum	publicis temporarium	temporarii (*Digest*)
21. idem	ideo (*text and index*)	·	idem et in *till line* 24 adficiendi erunt *after* inuenta est *p.* 96 *l.* 12	
balneariis	balneariis (*text*) balneriis (*index*)	balnearibus	ualneariis	
sed se telo		telo	et telo	telo se (*Digest*)

Line and Word.	Berlin;	Vienna,	Vercelli.	Other Readings.
PAGE 94—*cont.*				
21–22. uel effractores uel	uel efractores uel		factores res uel	
22. ceteri his similes	ceteris miles	ceteri similes	ceteris miles	ceteri his similes (*Digest*)
23. poena humiliores, honestiores uero relegatione	p(o)enas	p(o)enas humiliores honestiores uero relegationem	p(o)enas	uel. honestiores relegationis (*Digest*)
adficiendi		efficiendi		
25. Paulus libro sententiarum II sub titulo de furibus	P. liber s. (*text*) P. liber s. II. (*index*) s. t. d. f.	idem	idem de furibus	
26. damnatus				condemnatus (*Paul.*)
PAGE 96.				
1. qui contractat		contraectat	(*a*) contractat et qui infra	qui dolo malo (*Paul.*) (*Hus.*)
3. et qui intra terminos	qui *omitted* (*a.*) terminus	terminis		
3–4. loci, unde furatus est	locum defuratus est	fur est		unde quid (quis *good M.S.S.*) sustulerat (*Paul., Hus.*)
4. conprehensus				deprehensus (*Paul.*); cum re deprehensus (*Hus.*)
4–5. locum quo	locum (quo *omitted*) d.	*omitted*	locum quem	
5. destinauerat peruenerit nec manifestus	p. nec manifestatus			peruenirent (*Paul.*)
est fur in	e. f. intra			fur est (*Paul., Hus.*)
6. rapiendo conprehensus eum fecisse				faciendo (*Paul., Hus.*) deprehensus (*Paul.*) eum furtum fecisse (*Paul.*); furtum fecisse (*Hus.*)
7. tenetur		(*a*) *after* tenetur *has* quidem furtiuam		is tenetur (*Paul., Hus.*)
7–8. est inuentum				quaesitum et inuentum est (*Paul., Hus.*)
8. is	his	*omitted*	(*b*) his (*a*) *omitted*	
qui rem		quidem		
ali		mali	mali	
optulit		obtuli		
9. se inueniretur actione is	accionem his	rem inuenitur actionem ira	accionem his	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 96—*cont.*				
10. perisse conceptiua autem				perdidisse (*Paul.*) concepti is (*Paul.*)
10–11. qui rem concepit et inuenit oblati agere potest	oblatae agere potest	*omitted*	*omitted*	qui r. c. (id) est inuenit oblati is agere potest (*Paul.*)
12. concepta	concepti	concepta	concepta	concepta et (*Paul.*) concepta id est (*Pith. Hus.*)
16. testis	testes			
18. contentio	contemptio			
21. ei delebitis	deletis	*omitted* delebit	deletis	
22. medio ceteri	medium		ceteris	
24. paulus libro singulari titulo	p. liber s.	idem tituli	*omitted*	
25. legem	lege			
26. dixerit ac	dixerint	haec		
27. esset		esse	esse	
PAGE 98.				
1–2. paulus libro sententiarum quinto sub titulo ... et de quaestionibus	p. liber	idem	*omitted*	et de quaestionibus *omitted in Paul.*
3. Hi				hi *omitted in Paul and Digest*
falso uel uarie	falsum uel aliqua	falsum uel aliqua	falsum uel aliqua	falso uel uarie (*Paul.*) *Hus. adds* uel obliqu
dixerunt utrique	utriusue	dixerint	dixerit	
4. prodiderunt		prodiderint		
4–5. aut in exilium.....submouentur				a iudicibus competenter puniuntur (*Digest*
4. exilium aguntur insulam		exilio arguntur insula	exilio	
5. submouentur	submouetur	submouetur	submouetur	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 98—*cont.*				
6–7. Idem libro [sententiarum quinto sub titulo] ad legem Corneliam de sicaris et ueneficis	idem liber ad lege cornelia de s. et beneficis (*index*). idem libro ad legem corneliam de sicariis et beneficis (*text*)	idem libro ad legem cornel-iam de sicariis et beneficis	idem librum ad legem cornelia de sicaris et beneficiis	Idem libro sententiarum quinto sub titulo (*Blume*); idem (eodem) libro (sub titulo) ad legem corneliam de sicariis et ueneficis(*Hus.*)
8. cornelia poenam infligit	corporalia penam infigit	poena	infigit	
9. eiusque furtiue	furtique			eiusue (*Paul. correctly*)
10. uendiderit		et uendiderit		
11. falsumue quo mortisue	mortis suae	falsum quod	falsum mortis suae	
12. poena		poenam	poenam	
13. uindicari crucem	uindicare	uindicare	uindicare cruce	
14. subiciuntur				obiciuntur (*Paul.*,*Hus.*)
15 16. Paulus libro sententiarum quinto sub titulo ad legem corneliam testamentariam	Paulus liber s: V s. t. ad legem c. testamentaria (a lege c. testamentariam *index*)	P. l. s. quinque s. t. a. l. c. t.	(*a*) idem (*b*) Paulus	
17. qui perhibendum	hii qui	his qui	hi qui	qui (*Paul.*) perhibendum uel uerum non perhibendum (*Paul.*, *Hus.*)
18. pecuniam ue ut			pecunia uelut	
19. corruperit			corruperat	
20. capite	capte			
20–21. ipso iudice	ipso iudicem	ipsum iudicem		
21. deportantur	deponantur	deponantur	deponantur	deportantur (*Paul.*)
23. falsum ueritate uero	falsus (*index*) uerum		ueritatem	
25–26. Ulpianus libro octauo [de officio proconsulis] s. t. d. p. l. c. testamentariae	ulpianus sub titulo de poena legis corneliae testamentaria libro viii	(ulpianus sub titulo *omitted*) de poena legis corneliae testamentariae libri viii.	idem	*Blume supplies* de officio proconsulis

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 98—*cont.*				
27. senatus consultum		senatum consultum		
27–28. statilio et tauro consulibus		statiro et tauro consulibus		statilio Tauro et Scribonio Libone cos. (*Pith. Hus.*)
28. quo poena qui quid	quidquid	quod poenam quicquid	quidquid	
29. quam testamentum [dolo malo falsum] signariue	*omitted* signaueriuae	quas *omitted* signari uel	*omitted*	in testamento (*Digest*) dolo malo falsum (*Digest*)
PAGE 100.				
1–2. item qui ad falsas testationes faciendas testamentaue falsa inuicem dicenda aut consignanda dolo malo coierint	item (idem *index*) quod f. t. f. testamenta uel f. i. d. aut cons. dolo malo curauerit licinio V. et tauro conss.	*omitted*	item quod f. t. f. testamenta uel f. i. d. aut cons. dolo malo curauerit	item qui f. t. f. testimoniaue f. i. d. dolo malo coierint (*Digest*) *Mom. has* item qui ad f. t. f., etc. item qui falsas testationes faciendas aut consignandas testimoniaue falsa inuicem dicenda dolo malo curauerit (*Hus.*)
3. licinio V et tauro conss. item instruendam	struendam	idem struendam	*omitted* struendam	instruendam (*Pith.*) *on comparison with Digest* xlviii., 10, 1 *and Digest* xlviii., 10, 20 (litem in) struendam (*Hus.*)
4. testimoniaue pecuniam pactusue	pecunia	pecunia pactus sui	testimonia uel pecunia	
4–5. [societatemue]	societatem	societatem	societatem	societatemue (*Mom.*)
5. aliquam de ea re pactionem	delationem	delationem	aliqua delationem	de ea re pactionem (*Mom.*) aliquam obligationem (*Hus.*) *either reading can be supported from Digest* xlviii. 10, l. 20, fals poena coercentur e qui ad litem instruendam aduocatione testibusue pecuniam acceperunt, obligationem pactionemue fecerun societatem inierun

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 100—*cont.*				
6. item		idem	idem	
ad accusationem	ab occisione (*index*)			ad accusationem (*Pith. rightly from Digest* xlvii. 13, 2)
6-7. consulto quod		consultus		
7. Cotta	cocta	cocta	*omitted*	
messalla	messella	metalla	mesalla	coss. *inserted by editors after* messalla
coercetur	cohercentur	cohereentur	cohercendum	
8. denuntiandum uel non denuntiandum	uenundandum uel denudandum non	uenundandum uel denudandum non	(*a.*) uenundandum (uel denudandum non *omitted*) (*b.*) remittendum uel	denuntiandum uel non denuntiandum (*Cujas*) (*Cf. Dig.* xlvii., 13, 2, xlviii., 10, 1, 2)
remittendumue				
9. consulto		consultus		
10. est	sit	sit	sit	
poena			paenam	
13. item		idem	idem	
moyses			moyses dicit	
14. aduersus		aduersum		
15. Ulpianus libro viiii		} *omitted*	*omitted*	libro viii (*Cujas*)
[sub titulo]	*omitted*	*omitted*	*omitted*	
ad		*omitted*		
17. lege	legem	legem	legem	lege (*Hus.*)
testimonium		in testimonium		
18. capite			capitulo	
octogesimo		octogesimi		
septimo et	et vii	et viimi		
capite			capitulo	
18-19. octogesimo		octogesimi		
octavo		octavi		
19. [capite octogesimo octauo]				capite octogesimo octauo *added by Lach.*
his	his uerbis	his uerbis	his uerbis	his uero (*Lach.*)
20. hac	in hac	in hac	in hac	
ne liceto	ne licito	nec licito	nec licito	
21. parentеue	parentemu(a)e	parentemu(a)e	parentemu(a)e	
libertoue		liberta uel	liberto uel	
libertiue	} libertus liber-	libertus liberta-	libertus liberta-	libertiue libertaue
libertaue	tauerit	uerit	uerit	liberauerit (*Mom.*);
liberauerit				libertaue liberauerit (*Hus.*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 102.				
1. quiue		quibus	qui uel	
inpubes erit	inpuber erit	inpuber erit	inpuuere erit	impuberes erunt (*Digest*)
iudicio publico damnatus est qui	*omitted*	*omitted*	*omitted*	iudicio p. damnatus erit qui (*Digest*)
2. in integrum			in integrum eorum	
est				erit (*Digest*)
quiue			qui uel	
custodiaque	custodiaqu(a)e	custodiamque	custodiaqu(a)e	custodiaue (*Digest correctly*)
3. publica erit		publicauerit		
quiue			qui uel	
depugnandi		depugnandia		
auctoratus		(*a*) dictoratus		
quiue			qui uel	
4. ad bestias	ad *omitted*		a bestias	
depugnare				ut depugnaret (*Digest, Hus.*)
se locauit	se *omitted*	*omitted*		locauit *omitted in Digest*
locauerit		(*a.*) lacauerit		
praeterquam		praeterquem		
qui iaculandi	quiaculandi			
5. causa		causam		
urbem			urbe	
est erit		steterit	steterit	
palamue			palam uel	quaeue palam (*Digest, Hus.*)
corpore	corporem	corpus		*omitted in Digest*
6. feceritue,	fecerit			
quiue			qui uel	
ob		*omitted*		
dicendum				*after* dicendum *Digest inserts* uel non dicendum
7. iudicatus				iudicatus uel conuictus (*Digest*)
7–8. nec uo [lens] quis eorum hac lege in reum testimonium dicit	neue quis eorum hac legem in reum testimonium dicat	neque quis eorum hac lege in hoc testimonium dicat	neque quis eorum hac lege in reum testimonium dicat	nec uolens quis eorum hac lege in reum testimonium dicit (*Mom.*) nequis eorum hac lege in reum testimonium dicat (*Hus.*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 102—*cont.*				
8-9. octogesimo septimo his inuiti in reum testimonium	octogesimo septimo his homines inuiti in reum testimonium	octogesimi vii hi homines inuiti in reum testimonium	octoginta septimonium	*Mom. deletes* homines. octogesimo septimo Hi homines inuiti in r. t. (*Hus.*)
9. ne dicunto qui sobrinus	nec dicunt	nec dicunt consobrinus	nec dicunt	ne dicunto (*Laçh., Hus.*)
10. propioreue cognatione	propiore uere	proprioreue cognationem	qui priore uel	
11. priuignusue reliqua	priuignusque (*b*) reliquia	priuignusque	priuignus qui	
12-13. Paulus libro sententiarum[v]sub titulo de testibus et quaestionibus	(paulus libro *omitted in index*) p. l. sent. s. t. d. t. et. qu. (*text*)	*omitted*	*omitted*	et quaestionibus (*omitted in Paul.*)
14. suspectos	susceptos	(*b*) suscoeptos (*a*) susc(o)eptus	susc(o)eptus	suspectos gratiae (*Paul.*)
et quos de domo 15. eduxit infamauerit	quod	*omitted* deduxit	deduxit	de domo produxerit (*Paul., Hus.*) infamarit (*Paul.*)
16. in testibus spectari	*omitted* expectari	ex(s)pectari	ex(s)pectari	teste (*Paul.*)
16-17. in adfinem	si sint adfinem	in hac finem	in adfinem	
18. patroni et	*omitted*	*omitted*	*omitted*	*omitted in Paul., added by Hus. cf. Digest* xxii., 5, 4
19. uerae	hi uere	iubere	iuuere	uerae (*Paul.*)
20. corrumpit			corrupit	
23-28. moyses..... liberabitur				Moyses ..... liberabitur *is also to be found in the Beauvais Codex*
23. moyses dicit		moyses dixit	moyses dixit	respondit moyses (*Beauv. Codex*)
24. aliquis proximo suo aut uas	aliquid proximum suum (*index*)		et	aut aurum aut uasa (*Beauv. Codex*)
25. de domo si inuenitur qui furatus est		de eo homo qui furatus est *twice*		si inuentus fuerit (*Beauv. Codex*)
26. reddet fur accedet	fur accedat	reddat furanti de	eam rem reddat	reddat (*Beauv. Codex*) fur accedat (*Beauv. Codex*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 102—*cont.*				
26-27. is qui commendatum susceperat	his q. c. s.	is que		dominus domus (*Beauv. following Jerome's version*).
27. ante iurabit	iurauit	stabit ante	iuret	
27-28. nihil se nequiter egisse de omni re		n. s. n. egisset de o. re		nihil s. n. e. malest (*i.e.* male se) cogitasse neque intercepisse detinnuire (*Beauv. C.*)
28. commendata		commendatam		
PAGE 104.				
1. Modestinus libro differentiarum secundo [sub titulo]	sub titulo (*omitted*)	*omitted*	*omitted*	sub titulo (*added by Mom.*)
2. et commodato	uel commendato	et commendate	et commendato	et commodato (*Hus.*) uel commendato (*Mom.*)
3. commodati	comendati	quomodati (?)	commendati	commodati (*Hus., Mom.*)
et	est	est	est	
4. depositi culpa	de depositi culpam			
4-5. condemnandus		condempnatus		
5. commodati enim contractu utriusque	comodati contractus	utrisque	commendati enim *omitted* utrisque	*Hus. adds* in
7. causa sola uertitur et ibi	causula tibi	causam solam uestitur	uestitur	
9. iudicium	iudicio	iudicio	iudicio	
10. uxoriae et culpa	uxori et culpam	luxuriae	uxori *omitted*	
11-13. iudicium dolus. non etiam culpa .....liceat in tutelae iudicium utrumque d. c. s. pupilli non etiam	iudicio dolus non etiam	iudicio d. hi. n. e. c. .... liceat in t. iudicio u. d. c. s. polli n. e.	iudicio d. n. e. c..... ..... liceant in t. iudicio utrorumque d. c. s. p. n. e.	
13. tutoris		(*b*) rectoris		
14. administratione		administrationem		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 104—*cont.*				
14. uersetur damnatus	uersatur	uersatur	uersatur d. non fit	
14–15. infamis est qui uero commodati damnatur		*omitted*		
15. fit infamis alter		sit infamus alter enim	sit	
16. culpam actione		actionem	culpa	
17. depositi conuentus	deposito	depositus	deposito	depositi (*Digest*) conuentus seruo constituto (*Digest*)
cibariorum	ciuariarum	cybariarium	ciuariarum	cibariorum (*Digest*)
18. at is commodata	ad his com(m)endata est	ad his (*b*) com(m)endata est (*a*) commendantem	ad his com(m)endata est	
cibariorum	ciuariarum	cybariarum	ciuariarum	cibariorum (*edd.*)
19. iure persequitur		siue persequentium		
20. aegrum			eorum	
20–21. res deposita subripiatur	respondit deposita subriatur (*index*)	de dominos subripientes subripiantur	*omitted*	
dominus dumtaxat furti actionem	dominus domui	dominus domui furtu	domus domui actione	dominus dumtaxat (*Schult.*)
22. eius	*omitted*			
22–23. in rem factas		idem facta		
23. rem retinere est	se sit	se sit	se retineri sit	rem (*Edd.*) *grammatically should be* est (*Mom.*)
24. soluendo fuerit actio commodati	soluenda actio fuerit	soluenda actio fuerit rem per	soluenda actio fuerit commodatis rem per simplo	soluendo fuerit actio (*Pith.*)
25. semper simplum				
26. uel naufragii incendii		naufragii incendiu		
27. res deponatur		reponatur	re deponatur	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 106.				
1-3. Hermogenianus sub titulo depositi huiusmodi inserit constitutiones: Idem Augg [et] Caess. Fl. Munatio	Ermogenianus sub titulo de (de *omitted in index*) depositi huiusmodi inseri constitutione idem augustus cesar flauius munatio	idem	*omitted*	H. sub t. de deposito h. i. c. : I. Augusti et Caess. Fl. M. (*Hus.*)
4. casum praestare certi	casu	casu praestari	casu et rei	
5. itaque proponas ùi fuere	sui	utique sui	propaenas suis fuerit	
7. rector		rectorem		
8. necti adhibita uarietate	nectu uarietatem	nec adhibitam uarietatem	nec	necti (*Hus.*)
9. ortum sua ratione decidetur	hortum rationem	(*a*) certo (*b*) certum suam nationem decidatur	suam natione decidatur	
10. subscripta VIII K. Iul. Serdica Augustis cons.	Serdica augustus cesaribus			
11. Idem Augg. et Caess. Fl. Aurelio Altenico Andronico	idem augustus (aug̅. ind.) et cesare (ces̅. ind.) Fl. Aurelio altenico andronico	*omitted*	*omitted*	idem Augusti et Caesares Fl. Aurelio Attenico Andronico (*Hus.*)
11-12. eos penes 12. quos materiam proponis	eus perne materia	eas poenas quas materia	eas paenas materia propaenis	te proponis (*Hus.*)
13. rectorem qui eos	quod	rectorum quod	quod	qui eos (*Hus.*)
14. fecerint quominus possint	fecerunt cominus	cominus	cominus positi	

Line and Word.	Berlin,	Vienna.	Vercelli.	Other Readings.
PAGE 106—*cont.*				
15. conpellet		compellit	compellit	compellet (*Hus.*)
Subscripta VI. K. April.	subscripta VI kł. april	subscripta VII kl. aprelis		
15–16. Sirmi Caess. cons.	syrmi cess. ____ cons.	*omitted*	*omitted*	Sirmii C. Cons. (*Hus.*)
17, Idem Augg. et Caess. Aurelio et Eustathio et Diosimo	idem augustus et cesares a. et eustatio et diosimo	idem		
18. suscepit aliud		accoepit alium		
19. memor			memoria	
21–22. qualitate suam ordinabit sententiam	suae ordinauit sententia	qualitatemque ordinauit	suae ordinauit	
subscripta XIIII k. Nou. Appiaria	subscri. XIIII k. nou. appiaria	*omitted*	*omitted*	*Mom. suggested* XVI k. nou. appiaria caess. cons. (*see his essay, Die Zeitfolge der Verordnungen* Diocletians *in Actis Acad. Berol., a.,1860, pp. 438, 442.*
23. Idem Augg. et Caess. septimiae quadratillae	idem augustus et cesares (cesare *index*) uii et quadratille (quatratille *index*)	idem	*omitted*	(quadratillae *omitted Just. C.*)
dolo malo		dolum malum		*omitted Just. C.*
24. depositum conuentus	posito			conuentus et condemnatus. *Just. C.*
ad eius			*omitted*	
24–25. restitutionem cum infamiae periculo urguetur	cum infam(a)e periculo restitutionem	cum infam(a)e periculo restitutionem	cum infam(a)e periculo restitutionem	restitutionem cum infamiae periculo (*Just.*)
25-26. Subscripta prid. idus decembres nicomedia CC. conss.	scriptaid decem ii comedia ccs. cons.	urguntur subscripta pridie id. dec.	*omitted*	*omitted Just. C.*
		omitted		*omitted Just. C.* nicomediae (*Hus.*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 106—*cont.*				
27. Paulus libro secundo sententiarum sub titulo	paulus lib. (liber *index*) sent. sub titulo secundo	idem	*omitted*	
28. alium id		aliud		
29. seruandum				*some such phrase required as* sed pariter seruandum (*Mom.*)
29-30. quod [ad] breue	quod breue	quod breuem	quod breue	
31. metu ruinae incendii naufragii		me et in urbi nec incendunt naufragium	meturbine incendunt	
PAGE 108.				
3. causa deponit suspectam habens	habent	cause (deponet *omitted*) suspecto	*omitted* suspecta	
3. rem commendat sacculum	res commodat sacellum	re commodat saccellum	commodat saccellum	sacculum (*Paul. and Digest*)
4. [signatum] penes quem	*omitted* poenae	*omitted* poenes que	*omitted* paenis	signatum (*Paul. and Digest*)
5. contrectauit actio		contrectaui actioni	contrectaui	contrectauerit (*Paul., Digest, Hus.*)
6. ex	hec			
7. praestantur			prestentur	
8. penes se depositam	poenae se posita	poenes sedem positam	poene	
9. directam utilem	direptam	direptam	direptam ut ille	
10. eaque uti tibi permisero	eam hanc quem tibi comissero	eamquae tibi promisero	eamquae tibi promisero	eamque tibi permisero (*Mom.*). eaque uti tibi permisero; *Blume after collating Digest* XII, 1, 9, *and* XII. 1. 10
11. mutua	mutuam	mutuam		
deposita	depositam			
12. depositam redemeris post	deposita redimeris postquam	redimeris eam postquam	redimeris eamque postquam	redemeris post (*Mom.*); postquam redemeris (*Krueger*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 108—*cont.*				
13. semel admisso	semel amisso	se mala misso	semel amisso	
perpetua	perpetuam	perpetuo		
13-14. actione teneberis ex causa depositi lege duodecim tabularum in duplum actio	actionem t. et c. d. legem d. t. in d. a.	*omitted*	actionem tenebis ex c. d. l. d. t. in. d. actio	
15. edicto	edictum			
16. Gregorianus libro IIII sub titulo de deposito	(de *omitted in index*)	idem	idem	
17. Imp. Alexander A. Mestrio militi.		*omitted*	*omitted*	(militi *omitted*) *Just. C., Hus.*)
incursu latronum		missorio m. incisso l.	incurso l.	si incursu (*Just. C.*) latronum uel alio fortuito casu (*Just. C.*)
18. deposita		exposita	exposita	
interfectum ab eis	inter prefectum			ab eis *omitted* (*Just. C.*)
perierunt			perierint	
19. heredes				heredem (*Just. C.*)
dolum tantum				dolum solum et latam culpam si non aliud specialiter conuenit (*Just. C.*)
20. debuit	debunt	potuit		
pertinet praetextu commissi	ex pretexto	ex pretexto	ex pretexto	praetextu (*Just. C.*) commissi uel alterius fortuiti casus. (*Just. C.*)
21. quae potestate heredis sunt	quae heredi sunt	quem potestatem	quem potestatem heredi	sunt uel quas dolo desiit possidere (*Just. C.*)
21. restituuntur	restituntur			
22. [ad] exhibendum	*omitted* (*a*) exibendo	*omitted*	*omitted*	ad (*Just. C., Pith.*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 108—*cont.*				
22. et	*omitted*			etiam (*Just. C.*)
23. Prop. VII Kal. Iul. Maximo bis et Urbano conss.	prop. VII đ kł iuł. maximiano bis et urbano cc.	*omitted*	*omitted*	pp. iiii id. iul. maxir et urbano cons. (*Jus C.*)
24. Paulus libro responsorum v. sub titulo	P. liber r. v. s. t.		*omitted*	
26. antoninus Agrippino	agripino		agripino	antoninus a. (*Just. C.*
PAGE 110.				
1. uis effracturae praestare	sui efracture	sui	sui (*a*) efferacture	effracturam (*Just. C.*) conductori praesta (*Just. C.*, *Hus.*)
2. si quid ex depositis	expositis	si quis expositis	si quis expositis	ex depositis (*Just. C.*
3. extrinsecus horreis	horrei			extrinsecus (*after* qu *in previous lin Just. C.*)
perit depositorum	*omitted*	perit	perit	perierit (*Just. C.*) depositarum reru (*Just. C.*)
sarciri			sarcire	
4. Prop IIIInon. Nou. Antonino IIII cons. Paulus respondit	prop. iiii non nou antonino iii conss paulus R.	*omitted*	*omitted*	pp. prid. non. ian. an nino a. iiii et balbi conss. (*Just. C* prop.....A IV (et B bino) (*Blume*, *Hus.*)
5. praepositam		propositam	proposita	
6. inputari posse	* *after* posse expł titulo de depositio unde: incip.	imputare		imputari (*Hus.*) * *Lach. correctly tur* unde incip *in* undecimus
10. inuolauerit aut		embolauerit et		
11. uendiderit uitulos restituet uitulo uno	uindederit uitulus restituere uitulum unum	restituat	restituat	restituat (*Hus.*)
12. oue una		ouem unam		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 110 – *cont.*				
12. uenundetur			uenundatur	
14. Paulus libro sententiarum V sub titulo de abactoribus	Paulus liber sententiarum sub titulo de abgeatoribus	*omitted* de abactoribus	paulus libro sententiarum v. sub titulo de actoribus	abigeatoribus (*Hus.*)
15. plerum que		pecorumque		
16. dantur			datur	
18. abigunt ferro aut	habigunt a ferro	reabigunt a ferro	a ferro	aut si ferro (*Blume*), ferro aut (*Hus.*)
conducta manu		conductam manum		
20. abactores sunt qui uel duas	abegeatores sunt	(abactores sunt *erased*) *omitted*	(abactores sunt *erased*) *omitted*	abactores sunt (*Paul.*) duas (*Paul.*)
21. [oues]	*omitted*	*omitted*	*omitted*	*added by Hus., omitted in Paul.*
porcos abegerint	porcus	abigerit	abigerit	aut porcos (*Paul.*)
22. numerum fuerit ablatum in poena	numero inponat	oblatum inponat	numero fieri oblatum inponat	in poena (*Paul.*), poena (*Blume*). in poenam (*Hus.*)
23. qualitate eius aut triplum	triplum	qualitatem triplum	eius apud triplum	triplum (*Paul.*) quadruplum (*Schult., Hus.*)
aut				uel (*Paul.*)
24. datur		dantur		
25. domino			dominum	
PAGE 112.				
1. idem titulo	cet (*index*)		item	
2. si ea de litigauerat		sic a deque	si ex litigauerit	litigat (*Paul.*) litigabat (*Hus.*)
3. remittendus conuictus furis	coniunctus (I. P. eodem	iremittendus foris	foris	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 112—*cont.*				
5. Idem Paulus eodem libro et titulo	libro et cet (*index*)	*omitted*	*omitted*	
6. quodue aliud pecus		quodue (*b.* quod uel) aliud pecus pecus		
abduxerit		adduxerit		
7. furem magis eum		non furem eum esse		
abactorem constitui	abegeatorem	constitutio		
8. Paulus libro singulari	(Paulus liber singulare *index*)	*omitted*		
paganorum	(pagaconorum *index*)			
abigeis		(*a*) abiseis	ambigeis	
10. abigei damnantur		abysei dampnatur	ambigei	
11. Baeticae rescripsit	beticae et ipsi	betticae	battice	
12. ad forum	(*b*) furum (*a*) frum	a		
remittendus	premittendus	premittendus	premittendus	
13. condemnandus	condemnandis			
14. Ulpianus libro octauo de officio proconsulis	Ulpianus liber (*index*)	idem de officio proconsulis	*omitted*	
14-15. sub titulo de abigeis;		de sub titulo abiseis puniendis	de abigeis puniendis	
16. de abigeis puniendis rescripsit	*second* de *omitted*		scripsit	
concilio		consulio		consilio uetice rescrips
17. Baeticae Abigei cum gladium	beticae	betticae quod olantium	betticae abigeis	(*Diges*
18. solent puniuntur		puniantur	solet	
19. frequentius hoc maleficii alioquin et	frequentium	maleficia loqui nec		id (*Digest*)
20. temporarium damnantur		temporalium	damnatur	dantur (*Digest*)
21. maximum	maximo	maximo	maximo	maximum (*P. Faber*)
22. ut ad gladium abigei		aut gladio	ambigei	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 112—*cont.*				
24. affectus rescriptum		rescripti	adfertur	adfectus (*Hus.*)
26. poenam	poena		paena	
27. differentia	differentiam			
28. et eos qui ad ludum			et eos qui ad ludum *before* est autem *in previous line*	
damnantur			damnatur	
29. debent	debet	debet	*omitted*	
PAGE 114.				
1. mandatis ludum	damnatis	damnatis ludunt	damnatis	mandatis (*Pith.*)
2. pilleari			pillearii	
3. interuallum	interpalam	interpella	interpella	interuallum (*Pith.*, *Lach.*), interualla (*Hus.*)
4. pilleari rudem induere			pillari (*b*) rudem indulgere	rude batuere ((*Lach.*)
5. rescripto	(bel scripto *index*)	scripto	scripto	
6. parem poenam		patrem ponam		
7. idem	item (*text*) idem (*index*)	idem	item	
libro et titulo qui supra	liber et ī (*index*)	libro et tituli *omitted*	*omitted*	
8. hi pastu et			*omitted* et *omitted*	pascuis uel (*Digest*)
9. armentis	fermentis			uel ex armentis (*Hus. with Digest*)
quodammodo depraedantur abigendi	quod admodo abigei	uepraedantur abigei	quod ammodum abigei	abigendi (*Digest correctly*). *Mommsen reads* abigei
10. exercent equos de gregibus	exercentes quas degere	exercentes quas degere	exercentes quas degere	exercentes equos de gregibus (*Digest*)
11. abducentes ceterum si		adducentes et cetera idem si		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 114—*cont.*				
12. equum relictum in solitudine	equum in solitudinem	equum in solitudinem	equum in solitudinem	equos in solitudine relictos (*Digest*), equum iu solitudine (*Mom.*)
abduxerit		adduxit	abduxit	
abigeus			ambigeus	
13. fur potius et porcum		potius fur *omitted*	*omitted*	porcam (*Digest*)
uel capram		et capram		
uerbecem	berbicem	berbicem	berbicem	uerbecem (*Mom.*), uerecem (*Digest*, *Hus.*)
abducunt	adducunt	adducant		abduxit (*Digest*)
14. ut hi qui	ut his qui ad			quam (*Digest*)
abigunt	abigent	abigent	ambigent	
plecti		(*a*) pecti		
15. poenam [item] temporari	poena item operibus	item operibus	item operibus	temporari (*Mom.*), item operis (*Digest*), item (temporarii) operi (*Hus.*)
16. gladii		gladii grandi		
praestituerit	presto erit	presto erit	prestiterit	praestituerit (*Digest*)
honestiore	honestiori	honestiori	honestiori	honestiore (*Digest*), honestiori (*Hus.*)
17. hanc	hac			
poenam	poena		p(o)ena	
aut relegandi		etiam relegandi	etiam ut relegandi	
18. remouendi				mouendi (*Digest*)
ordine	ordinem	ordinem	ordinem	ordini (*Digest*)
Romae tamen etiam	R. t. e.	R. tam e. b. s. (*a*. subici *omitted*), (*b*. abici)	R. t. e. b. obici ab. uideamus et	*omitted in Digest*
bestiis subici	b. s.			
19. abigeos uidemus et	ab. uideamus et	ab. uideamus et		
abigunt			obiciunt	
inique	iniqui			
20. hac poena adficiuntur				bestiis obiciuntur (*Digest*)
23. dicit		di*it		
exierit	exiuit			
24. uel spicas aut		uel'	aut spicas	uel (*Hus.*)
aestimationem restituet	existimationem		existimationem restituat	
ille		ei ille		
26. Paulus libro sententiarum [quinto] sub titulo	Paulus liber sententiarum sub titulo (subdit *index*)	paulus libro sententiarum sub titulo	*omitted*	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 114—*cont.*				
27. casam	casa	cauca		
aut		(*a*) au		
uillam	pillam	pillam		
gratia	gratiam	gratiam		
28. metallum	metallo			
29. honestiores		honestiores uero		
insulam	insula			
30. furentis	fuerint his			ferente (*Paul.*, *Hus.*)
incuria	incuriam	incuriam	incuriam	
ignem			ignis	
agros	agrus	agri		
31. si	et si	et si	et si	si (*Paul.*)
ex eo				ex eis (*Hus.*)
uinea		uineas	uineas	uineae (*Hus.*)
oliuae	oliua	oliueta	oliuas	oliuae (*Paul.*)
fructiferae		fructiferas		
32. concrementur		concrementum	(*a*) concrementur	
aestimatione	extimationem		extimationem	
sarciatur			resarciatur	
PAGE 116.				
1. Paulus eodem libro et titulo		*omitted*		
2–3. noxae	noxae et	nos edictionem	nos et edictione	
3. deditione	editione			
sarcitur				sarciatur (*Paul.*)
messium		mensuum		
per dolum	perdum	perdunt	perdum	per dolum (*Paul.*, *Vesont.*)
3–4. uinearum				uel uinearum (*Hus.*)
4. aut in			in	
6. titulo		tituli		
qui supra			*omitted*	
7. incendia si qui	incendiarii quidquid	incendiarii quicquid	*omitted* quidquid	incendia si qui (*Hus.*) incendiarii qui quid (*Mom.*)
causa		causam		*omitted* (*Paul.*)
facile				
9. Ulpianus libro octauo proconsulis	octauo (*omitted in index*) et consulis (*index*)	*omitted*	*omitted* proconsule	
[sub titulo]	*omitted*	*omitted*	*omitted*	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 116—*cont.*				
10. naufragis	naufragiis	naufragiis	naufragiis	naufragis (*Hus.*)
incendiariis	Incendiariis	Incendiariis	Incendiariis	
	(*only once*)	(*only once*)	(*only once*)	
11. Incendiariis				
interdici	(*a*) interdicit	interdic		
iussit		iussi	iussi	
12. re uarie	uariae	(*b*) res uarie (*a*) res uali*ae	restituariae	uarie (*Hus.*)
puniti	(*a*) ponitionum (*b*) punitionum			
ciuitate			ciuitatem	
13. fecerunt, si	si in		si in	fecerint (*Digest, Hus.*)
humillimo			humili modo	humiliore (*Digest, Hus.*)
sunt bestiis		ueticii		sint (*Digest, Hus.*)
subici	subici	subici	subici	obici (*Digest*)
14. aliquo		alico		
gradu	grado			
fecerunt				fecerint (*Digest, Hus.*)
puniuntur	puniri	puniri	puniri	puniuntur (*Digest*) puniendi (*Blume*) puniri (*Hus.*)
14–15. aut certe				*Hus. supplies* deportationis poena. *Mom. leaves blank space. Digest has* in insulam deportantur. *Cujas has* exilio uel deportatione
15. [deportationis poena] adficiendi				
eis	et	et	et	ei (*editions*)
16. fecerint		fecerunt		fecerit (*Hus.*)
17. in lata et				*Mom. would prefer*
incauta				in causa lata
lasciuia		lasciuiam		
18. Paulus libro	Paulus libro	*omitted*	*omitted*	
singulari	(liber *index*) singulari			
paganorum	pacanorum (*index*), pagano R (*text*)			
20. causa			cause	
id admiserit		ad eam miserint		id admiserint (*Blume*)
21. puniantur	puniatur		puniatur	admiserint (*Hus.*)
casu			casum	
uillam			uilla	
ex inimicitiis	inimicitia			
22. fortuita enim		enim fortuita	in fortuita enim	
remittenda	remitenda	remittendi		
23. uicinis	uicini		uinis	
24. Ulpianus libro xviii ad edictum, sub titulo	ulpianus libro (liber *index*) xviii (*index, omitted in text*) ad edictum sub titulo	U. l. xviii ab edicto sub tituli	*all omitted, except* Ulpianus, *which is placed after* occisum esse *in line* 25	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings,
PAGE 116—*cont.*				
24. iniuria	iniuriam	iniuriam	iniuriam	
25. occisum	(*a*) occiso			
cum diceret	cum doceret	cum doceret	cum docere	
26. item si		in	id si	
insulam	insula	insula	insula	
meam		mea	mea	
adusseris	adusueris	aduserit	aduseris	
incenderis		incenderit		
Aquiliae		aquilia	aquilia	
27. actionem	accione	accione		
habebo		abeo	abeo	
idemque	idemque (*index*) itemquae (*text*)	itemquae	itemquae	
et si		ex	et	
uillam			uilla	
PAGE 118.				
1. meam			mea	
insulam	insula		insula	
exusserit	exuserit		exurerit	
etiam			ex etiam	
poena	poenam			
2. plectitur		flectetur	plectetur	
3. item	idem (*index*)	idem	item	item *omitted in Digest*
item (*text*)				
insulam	insula (*index*)			
exurere				meam exurere (*Digest*)
4. Aquilia			aquilie	
lege				lege *omitted in Digest*
uicino	uicini			etiam uicino non minus etiam (*Digest*)
5. inquilinis			inaquilini	inquilinis tenebitur (*Digest*)
ob		sub	sub	
5-6. et ita Labeo libro XV responsorum refert.		et ita Labeo resp. xv. referret	et ita Labeo responsurum v. refert	*omitted in Digest* et ita L. xv resp. refert (*Blume*)
7. sed si		sed *omitted*	sed *omitted*	
stipulam			stipula	
incenderis	incenderit	incenderit		
euagatus		euacuatus		
8. praedium	proelium			
illud			illum	
exusserit	exuserit		exurerit	
Aquilia	aquiliae	aquiliana		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 118—*cont.*				
9. habeat		habet		
an in		tam in	in in	
factum		facto	facto	
quaestio,	quaestio	quaestiones	quaestionis	quaestionis (*Hus.*)
10. sed	sed	et	et	
10-11. et ita Celsus	(et ita celsius	et ita celsius . . .	de stipula in-	
11. libro xxxvii	*index*) (dege-		cendentis cel-	
digestorum	storum *index*)		sius	
scribit ait				
enim				
si		*omitted*	*omitted*	
12. incendentis		incendentes		
effugit	fugit	offugit	effugerit	effugerit (*Hus.*
eum		*omitted*		
non	*omitted*			
13. exussit	exusit		exurit	
14. aliud egit	aliud legit	alius legit	aliud legit	
processit	precessit *	pr(a)ecessit	pr(a)ecessit	* *indicated by Mommsen* pr(a)cessit *in the MSS.; not so in the Berlin Codex*
15. sententia		sententiam		
et	sit	scit	sit	
rescripto	rescriptum		rescriptum	
diui Seueri		diuiserit	diui seuerit	
16. profitere	profiteri	profiteri	profiteri	*omitted* (*Hus.*)
[qui]	*omitted*	*omitted*	*omitted*	qui (*Hus., Scal.*)
pabuli	babuli			
17. culpa		culpas eorum	culpam	
seruorum			seruorum	
Veturiae	uecturiae	beturiae		
Astiliae		artiliae		
17-18. euagatus..	aeuacatus	*omitted*		
Aquiliae				
18. noxali		noxiri	noxalii	
19. actura si	acturas si	auctoras si	actoras si	acturas (*Hus.*)
iudicium	iudicium cum	iudicium kp. cii	iudicium cum	iudicium consistere potest (*Mom.*); *he also suggests* iudicem tum adire potes. iudicium cum ea edere potes (*Hus.*)
consistere	adire potest	idem adhire	adire potest	
potest		potest		
20. uisa	uisu	uisum	uisum	uisum aquiliam (*Blume, Hus.*)
21. fornacarius				fornacarius (*Digest*) forte seruus (*Mom.*)
servusue	quae idem con-	quae eidem con-	quae idem con-	qui idem conductor est (*Mom.*) *omitted in Digest*), seruusue aedium conductoris (*Hus.*)
aedium con-	ductores	ductores	ductores	
ductoris				
coloniue		colonia		coloniue (*Hus.*), coloni (*Mom.*)
22. obdormisset	obdormissent	obdormissent	obdormissent	obdormisset (*Digest*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 118—*cont.*				
22. neratius ex	muneris	munerari	munerari et	neratius (*Digest*)
23. locato conuentum in elegendis	loca conuentu in legendis	locata in eligendis	locata conuentu neglegendis	in elegendis (*Digest*)
24. fuit ceterum subiecerit	fuit tenetur ceterorum subierit	ceterorum	ceterorum	ceterum (*Digest*)
25. [an] tenetur namque non	tenetur	tenetur	tenetur	an tenebitur qui subiecerit (*Digest*) nam (*Digest*, *Hus.*) *omitted in Digest*
26. nihil qui	si nihil hic qu(a)e	nihil qu(a)e	si nihil qui	nihil (*Digest*) qui (*Digest*)
26-28. quem admodum si hominem *till* cessat		si hominem (*omitted*)		quem . . . . . cessat (*omitted in Digest*)
28-29. et hic puto ad exemplum aquiliae dandam actionem		et h. p. ad. exemplo a. dandam actionem		puto utilem competere actionem (*Digest*)
29. tam in ad	tamen *omitted*	tamen *omitted*	tamen	tam in (*Digest*)
30-31. obdormiuit uel neglegenter custodit, quam in medicum qui neglegenter curauit, siue homo periit siue debilitatus est	obordimiuit (c. q. i. m. q. neglegenter *omitted*)	obdormit et *instead of* quam	obdormit et *instead of* quam	quam in eum, qui neglegenter custodiit (*Digest*)
PAGE 120.				
1. nec eo obdormiuit humanam	ne (*b.*) humana	obdormiit humaria	ne eum obdormiit	
2. uel ita			uelit	
3. ut non euagaretur	u. n. euacaret	u. n. euaderet	u. n. euacaret	ne euagetur (*Digest*)
3-4. item libro VI ex Vibiano relatum est	item (idem *index*) l. vi. ex uiuiano relegatum est	item libro ui ex uiuiano relegatum est	*omitted*	*omitted* (*Digest*)
4. furnum	fornum	fornum		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 120—*cont.*				
5. iniuria		iniuriam	iniuriae	
teneris		teneres		tenearis (*Digest*)
et ait [Proculus] agi non posse Aquilia lege quia	et agit non posset id.	et aut agi (a*i) non posse id	et ait agi non possem id qui	et . . . . posse (*Digest*) et . . . . posse tecum (*Hus.*) aquilia lege (*omitted in Digest*)
6. et	*omitted*			
aequius	aequium	aequum	aequium	aequius (*Digest*), aequum (*Hus.*)
putat				puto (*Digest*)
7. sed non proponit exustum parietem				scilicet si paries exustus sit (*Digest*)
7–8. sane enim quaeri potest				sin autem (*Digest*)
8. [si] dederis	*omitted* dederit	*omitted*	*omitted*	
et				sed (*Digest*, *Hus.*)
9. habeas	habeat			
metuam	motuam			
mihi		*omitted*		
des an	de te	de te	de te	damnum des (*Digest*), detur (*Hus.*)
9-11. aequum *till* dixerit				*omitted in Digest*
9. interim	inter	inter	inter	interim (*Pith.*)
actionem		actionum		
10. id est	idem	idem	idem	id est (*Pith.*), *omitted by Hus.*
inpetrare	imperare (*index*)			
fortassis		fortasses		
11. non facti				infecti puto (*Digest*)
12. qui	quis	quis	quis	
exusserint	exuserit	excusserint	exurerit	
libro x			*omitted*	
Urseius		urbs eius	urbis eius	
refert			refere	
13. Sabinum	sauinum	sauinum		
lege Aquilia		legem aquiliam		
14. noxali	nox ab	noxiali		
conueniendum		inuęniendum		
locato	tolcato	togato	togato	
15. negat		debet		
autem				*omitted in Digest*
respondit	R	*omitted*		ait (*Digest*)
uillam		illam		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 120—*cont.*				
16. exusserint locato	exuserint	exuererint	exurerit locatum	exussissent (*Digest*)
uel lege	lege			uel ex lege (*Digest*)
teneri	*omitted*	tenere	tenere	
17. seruos posset dedere	seruus posset dederit	seruum posse	seruum posset	possit seruos (*or* seruum) (*Digest*)
esset		*omitted*		
18. altero		alterum		
agendum	(*a.*) agendo			
item	idem (*index*)	idem	idem	
Celsus	celsius (*index*)	celsius		
19. digestorum	degestorum (*index*)	degestorum		
scribit			scripsit	
apes		*omitted*		
aduolassent		reuolassent		
19–20. tu eas	totas	et totas	totas	tu eas (*Digest*)
20. exusseris	exuserit	eiusserint	et iusserit	
quosdam negare		quosdam necare	quodamni negari	
conpetere legis Aquiliae actionem		conpetere aquiliae legis actionem		*Digest has instead* legis aquiliae actionem conpetere
21. inter quos et proculum		inter quos et proculus		
22. falsum esse				
Celsus ait		celsius est		
reuenire	euenire	eueniri	euenire	
soleant		solent		
fructui			fructum	
23. mihi	missi			
sint	sunt	sunt	sunt	
eo mouetur		commouetur	eum mouetur	
23-24. ita clausae			ita cluse	cista clausae (*Hus.*)
24. fuerint	*after* fuerint, hd. (= hic deest)			
Celsus		(*b.*) celsius (*a.*) cels * * *	celsius	
25. manum	manu	manu		
28. dicit		dixit		
29. transmouebis terminos		transibis terminum		
quos constituerunt	constituerunt	posuerunt	quam statuerunt	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 120—*cont.*				
30. uel		*after* uel quem constituerunt *inserted*		
PAGE 122.				
1-2. Paulus libro sent.[primo] sub titulo finium regundorum	P. liber sent. (primo *omitted*)	(primo *omitted*) (titulo *omitted*) regendorum	(primo *omitted*) regendorum	
3. eum per terminos deiecit amouit	*omitted* terminus	eis *omitted* terminum deiecetxt[3] mouit	eis *omitted* terminus	per (*Paul.*)
4. anima aduertitur		animaduertit	animaduertatur	animaduertitur (*Hus.*)
5. Ulpianus libro octauo	U. liber (*index*), octauo (*index*) VIIII (*text*)	*omitted*		IX (*Hus.*)
5-6. de officio proconsulis sub titulo de termino moto	de o. p. s. t. de terminio m.	de o. p. s. t. de t. amoto	*omitted*	
7. eos terminos mouerunt inpune debere	terminus	terminum amouerunt impoenae debent	de eo terminum	terminum (*Hus.*)
8. k. Sept.	klr. septembriarum	(*a.*) klr. septembriarum (*b.*) kl. decb. et sept.	klr. septembriarum	
se consule		*omitted* consuli	re consul	
9. rescripsit quo statuit rescripti	rescripta	rescripsi que statui	rescripsi quod	
10. se pessimum factum	sed			quin pessimum factum (*Digest*)
finium		finiunt		
11. causa positos abstulerunt dubitari	causam	causas	posito abstulerint dubita	propulerunt (*Digest*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 122—*cont.*				
11. poenae tamen	poenae eam	poenae eam	poenae ea	poenae autem (*Hus.*)
12. modus ex condicione facientis		modo se conditionem facientes	modos ex facientes	de poena tamen (*Digest*)
magis statui	magistratui	magistratui	magistratui	magis statui potest nam (*Digest*)
13. potest nam si	poenam	poenam	poenam uariam statuit uerba rescripti *repeated before* si	
sunt personae				personae sunt (*Digest*)
14. non dubito quin occupandorum	con dubito quin	non dubito quis	non dubito qui non cubandorum	non dubito quin (*Mom.*) non dubie (*Digest*)
aliorum	(*a*) aliurum			alienorum (*Digest*)
causa admiserint		causam amiserint	causam admiserunt	admiserunt (*Digest*)
15. in cuiusque patitur aetas relegari	*omitted* cuiusque cum patitur	cuiusque com patitur eptas religaris	cuiuscumque patitur et	cuiusque patiatur (*Digest*)
15-17. id est... castigari	*omitted*	*omitted*	*omitted*	id est...-castigari *supplied from Digest*
17-18. et sic... dari				et ad opus biennio dari (*Digest*)
18. si aut		*omitted*	nisi	
18-19. fortuito	fortuitu	fortuitu		
19. usus causa	uisus causa	uisus causa	uis causa	usus causa (*Pith.*); *omitted in Digest*
sufficit				sufficiet (*Digest*)
coerceri	quoherceri	cohercerent		decidere (*Digest*)
22. quemquam Israhel		quemqua israhelitam		
23. uendiderit morte moriatur	uindederit	mortem morietur	*After* moriatur *is inserted* interpretatio plagiarus (*sic*) est qui hominem liberum rapit et uendit	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 122—*cont.*				
24. Paulus		idem paulus		
libro	liber			
titulo		tituli		
Fabiam	fabiani			
25. Lege Fabia		*omitted*	*omitted*	
Romanum	id manum		id manum	
ingenuum	ingenuus		ingenuus	
25-26. liberti- numue	libertinum	libertinum	libertinum	libertinumue (*Mom.*) libertinum (*Hus.*)
seruumue		seruum uel	seruum uel	
alienum			alium	
26-27. compara- uerit		comparatierit		
27. poena		penam	penam	
nummaria	summaria	summaria	summaria	nummaria (*Cujas*)
28. translata	tranlata			
praefectum	pr(a)efecto	pr(a)efecto	pr(a)efecto	praefectos (*Hus.*)
itemque	idemque (*index*)			
PAGE 124.				
1. ordinem			ordine	
animaduer- sionem	ani Inaduer- sionem		animaduersione	
2. aut	ut			
metallum		metallo		
dantur	damnentur			
crucem			cruce	
2-3. honestiores	honestiorem			
3. adempta		adepti	ademtum	
dimidia parte	dimidiam partem	dimidiam partem	dimidiam partem	
in perpe- tuum	impp.			
relegantur		(*a*) redigantant (*b*) redigantur		
4. domino	dno (*text*) dominum (*index*)			
alienum	*omitted in index*			
seruum	seruus (*index*)			
subtraxerit		substraxerit		
5. in domino	an		dominum	
6. datur		dampnatur		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 124—*cont.*				
7. Ulpianus libro nono	Ul. l. viiii sub titulo		*omitted; after* fabiam, ulpianus *is inserted*	Ulp. libro IV. (*Hus.*)
de officio proconsulis. sub titulo	de off. procon-sule	subtituli de off. proconsulis	(sub titulo *omitted*) de off. proconsulis	
9. legis Fabiae cognitio		legem fabiam conditio	legem	
in		*omitted*		
10. quamquam quidam Caesaris	cesari	tamquam quidum cessari	quidum cesari	quamquam eam (*Hus.*)
11. tam in prouinciis quam Romae iam	quam romae tam in prouintiis	quam romae tam in prouinciis an	quam romae etiam in prouinciis	tam in prouinciis quam Romae (*Mom.*), quum Romae tum in prouinciis (*Hus.*)
12-13. super ea re	superare	super ea		
13-14. iniuria commissa	in uia	iu uia	in uia	iniuria (*Pith.*), in Fabiam commissum (*Hus.*)
14. praefectorum		praefectorem		
15. cognitio				*After* cognitio *Hus. supplies* [in Italia]
prouincia est nec	prouintiam enim	prouintiam enim	enim (*a.*) *omitted*	prouinciis (*Hus.*) enim est (*Blume, Hus.*)
16. procuratori caesaris		percuratori necessariiis (*sic*)	} procuratoriis	
iniungitur quam si praesidis	iniunguntur quam	iungitur quas praesidias	quam praesidias	quam si (*Cujas*)
17. plane Fabia	plenae	fabiam	flabiam	
18. partes huiusce rei attamen	parte huiuscertae adtamen	(*a*) huiusce rei tamen (*b*) huiuscemodi tamen	parte huiusce rei et tamen	huiusce rei attamen (*Mom.*) Uice praesidis tamen (*Hus.*)
19. procurator nullam	procuratori illam	procuratori illam	procuratori illam	nullam (*Mom.*), illam (*Hus.*)
20. cognoscere tamen ut Fabia	fabiam	cognoscerent adtamen fabiam		cognoscere nequeat (*Hus.*)
21. imp. Antoninus constituit		idem imp. Antoninus constituit (*beginning a new chapter*)	*omitted*	
idem legis Iuliae		iuriae (*omitting* idem legis)	item (*omitting* legis iuliae)	item (*Hus.*)
22. adulteris constitutione	alteris		constitu*tionem	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 124—*cont.*				
22-23. quaestionem accepit	questionem accipit	questi nomen accepi		
23. lege autem Fabia		legem autem phariam		
24. eumue sit celauerit	eundemque	eundemque qui (*a*) celarierit	eiusdemque	eumue (*Pithou*), eu denique (*Hus.*)
24-25. uinxerit uinctumue habuerit	uinxerit uinctumque habuerit	et habuerit uinxerit uinctum	uinxerit uinctumque habuerit	uinxerit uinctumque habuerit (*Hus.*)
25. quiue eam			qui uel ea	
26. primo poena iniungitur	poenam	pro modo poenam ingungitur		*after* iniungitur *Huschk inserts* sestertium milium
27. quis	qui	qui	qui	quis (*Pauw*); *Cuja deletes.*
sestertiis	sextertiis	rex certis		sestertium (*Hus.*)
PAGE 126.				
1. milibus punitur capite secundo	militibus punietur capite secundum	punietur secundo capite	punietur	
2. qui		idem qui (*beginning a new chapter*)		
dominum		a domino		
3. seruum uendiderit	(*a*.) uendidedrit		seruo	
4. populo sestertia	populus extertiam	populo sextertia	populos extertiam	sestertium (*Hus.*)
5. dare		dari		
6. tamen est capitali	capitulis [1] capitalis [2]	est tamen	capitulis	
7. sententia plagiatores atrocitate puniendos		sententiam placiatores atrocitatem puniend (= puniendum)	atrocitatem	
8. metalli	metalli poenam	metalli poenam	metalli poenam	
9. reis inrogauerit	eis inrogauit	(*a*.) rei		
13. inueniatur in te		*omitted*		*Mom. suggests that should be* inuenietur
14. nec apud tollas consentias	aput tollat consentiat	ne		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 126—*cont.*				
14. uenenariis	uenerariis		uenenarias	
15. qui dicunt		qui dicunt *repeated*		
quid conceptum	coseptum	qui		
habeat		habet	habet	
mulier	mulieri	mulieri	mulieri	
16. intendas				attendas (*Hus.*)
17–20. [non inuenitur ..... inspiciens]				*This is another version of the preceding, and accordingly an interpolation*
17. auguriator	auguriatur	(*a.*) augoriator (*b.*) augurator?	augoriator	augurator (*Hus.*)
nec		uel		
18. pythonem	pitonem	phytonem	pitonem	
habens	habentem			
in uentrem		*omitted*		in uentre (*Hus.*)
19. nec			*omitted*	
haruspex	caruspex			aruspex (*Hus.*)
19.-20. inspiciens			inspicies	
21. qui			quid	
propter		pro		
enim			*omitted*	
abominationes			obominationes	
21 22. deus eradicabit	dn̄ eradicauit	denses abdicant	denses abdicant	deus eradicauit (*Hus.*)
22. Chaldaeos	caldeos	chaldeos	chaldeos	chananaeos (*Hus.*)
a facie tua	a facie sua	ad faciem tuam	a facie sua	
23. possides			possidebis	possidebis (*Hus.*)
24. auguria	uuguria (*sic*)			
PAGE 128.				
1. ulpianus libro VII de off. pr. sub titulo	ulpianus libro (liber *index*) VII	idem de . . . . tituli	*omitted*	
3. interdictum callida	interdictos	callidam		interdicta (*Hus.*)
4. obstinata persuasione	obstinacitate (*a.* obstanicitate) persuasio	obstinatam (*a.* opinatam) persuasionem	obstinata persuasione	opinatae artis (*Hus.*) persuasio
nec interdici eis		quo interdicte his	interdicit eis	
5. sed uetus est		seductus haec	seductos	
6. Pomponio et Rufo conss.	P. et r. consules (*text*), pompenio et ruffo consule (*index*)	pomponi et rufo consulibus	*omitted*	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 128- *cont.*				
6. cauetur ut	canetur	canetur et		
7. Chaldaeis simile inceptum fecerunt	caldeis similem incertum	chaldeis similem incertum	chaldeis similem incertum	simile inceptum fe int (*Hus.*)
8. interdicatur eorum	interdicantur erum			
8-9. si externarum gentium quis id fecerit	sic eternus gentium qui si id fecerit	sic externas gentium qui si id fecerint	sic externus gentium qui si id fecerint	
10. quaesitum scientia huiusmodi	quesito	scientiam huiusmohi	quesito	
11. [et] ueteres	*omitted*	*omitted* tere	*omitted*	
13. uariatum nec dissimulandum inrepsisse	uariatum nam	uarietur nam (*a.*) dissimulatum in rebus si se	uaritur nam in rebus si se	nec (*Oiselius*)
14. sepraeberent	reprehenderent	repraeberent	repraeberent	
15. quidem contumaciam	contomaciam	si quidem	si quidem	
16. uisi				ausi (*Pith.*)
16-17. consulere uel exercere quam quod fuerat permissum saepissime	consulere uel exercere quam qui fuerant p. s.	*omitted*	consulere uel exercere (*a.* ercere) quam qui fuerat p. s.	
17. omnibus	hominibus			
18. ineptiis se inmisceret	inmiscerent	inicerent	inneptiis se *omitted* (*a*) inmiserent	immisceret (*Hus.*)
19. puniti ii	punit hii	id	poniti hi	hi (*Hus.*)
qui id exercuerint mensura scilicet	quid exercuerunt scilicet et	quid mensuram		exercuerunt (*Hus.*)
20. qui de salute		quidem solute	quidem solute	salute (consuluere *add by Hus.*)
21. qua alia	qualia	qui alia		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
AGE 128—*cont.*				
. enim		ens		
qui de sua	quidem	quidem uario-	quidem suaro-	qui de sua suorumque
-22. suorumque	suasorumque	rumque	rorumque	(*Iac. Gothofred*)
. habentur			habenter	qui habentur (*Hus.*)
23. uaticinat-	quam uatici-		quam (*a.* beati-	uaticinatores quam-
ores, quam-	natores hii		cinatores) (*b.*	quam ii quoque plec-
quam ii quo-	quoque plec-	quam *the rest*	baticinatores)	tendi sunt quoniam
que plecten-	tendi sunt	*omitted*	hi quoque	nonnumquam (*Mom.*),
di sunt, quo-	q̄m nonnum-		plectendi sunt	u. hi quoque p. s. qu.
niam non-	quam		quoniam non	nonnumquam) *Hus.*)
numquam			umquam	
. quietem	(*a*) quaetem			
. denique			enimque	
decretum		digestus	decertum	
diui Pii		idem		
Pacatum	pacatum (*text*) pactum (*index*)	pactum	pactum	
. Lugudunen-	lugdunensis	(*a*) lugdunensis	lucudinensis	lugdunensis (*Hus.*)
sis		(*b*) lugdonensis		
rescripti		rescripto	rescripto	
. subieci	subiecit		subiecit	
denique				denique et (*Hus.*)
. Cassiano		cassianio	casianio	
uaticinatus		betiginatus	beatiginatus	
instinctu	extinctum	extinctu	extinctum	
. insulam	insula			
inpune			inpuni	
. homines	hominis			
obtentu	obtentum	obtentum	obtentum	
ex monitu	et monitu	et monitum	et monitu	ex monitu (*Mom.*); monituum (*Lenel, Palingenesis, Ulpianus* fr. 2192), (*Hus.*)
. enuntiant	renuntiant			
confingunt	eos fingunt, (*addition on margin by a later hand* confingunt *on Mommsen's authority, undecipherable in MS.*)	eos fingunt	eos fingunt	eos fingunt (*Hus.*)
AGE 130.				
. Gregorianus	Gregorianus		Gregorianus	G. l. xiii (*Hus.*)
libro vii	liber vii	*omitted*	libro vi	
sub titulo de	de maleficis et	de maleficis et	de maleficis et	
maleficis et	manichaeis sub	manichaeis	manichaeis	
-2. manichaeis	titulo	(sub titulo *omtd.*)	sub titulo	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 130—*cont.*				
3. Impp. Diocletianus et maximianus AA. [et Constantius] et	comp maximus diocliciano et maximiano nouelissimi āā	imperatoribus maximiano diocletiano et maximino nobilissimi āāā	imp maximianus diocletianus et maximus nobilissimi aaa	impp. Max., Dioc. maximino nobilissi AAA. Iuliano (*Hus.*)
4. maximianus nobilissimi [CC]				
proconsuli otia	proconsule		etiam	
5. incommodioris	in communionem	in communionem	in communionem	incommodioris (*Hus.*) in communione (*Mom*
6. humanae modum	hominem	modo		
7. ac superstitionis	hac			superstitiosis (*Hus.*)
ut	et		et	
9. sed dii inmortales	sedi inmortale	redde immortalis	redde	
ordinare et	ornare	ornare *omitted*		
10. dignati ut	et	dignitati et	et	ut (*Cujas*)
11. et egregiorum uirorum		egregiorum	egregorium	uirorum [ore] (*Hus.*)
12. inlibata statuerentur		in inlibata	statuarentur	
obuiam			ouiam	
14. deberet retractare	debere sed tractare	debere	debere	debet (*Hus.*)
14-15. ab antiquis				ab antiquitate (*Hus.*)
15. statuta suum	tractata sunt	sunt	sunt	suum (*Pithou*)
cursum	crusum		crusum	
17. ingens			(*a.*) ingens enim	
18. et sectas	ex rectas		rectas	
ueterioribus ut	deterioribus	ueteribus	ueteribus idem ut (*beginning a new chapter*)	ueteribus (*Hus.*) ueterioribus (*Cujas*) ui (*Hus.*)
pro			per	
19. prauo excludant	prauum			excludunt (*Hus.*)
diuinitus	diuinitas			
19 20. quondam	quoniam	quoniam	quoniam	quondam (*Cujas*)
21. manichaei audiuimus	manicheus audiuimus	manicheos audimus	manicheus audimus	manichaeos (*Hus.*) ; manichaei (*Mom*
ueluti [et]	uelut *omitted*			et *added by Mom.*; [*Hus. adds*
22. Persica			perfida	
23. committere		committeret		
populos	populus	populus	populus	
24. perturbare	perturbaret			
25. inserere adsolet		(*a.*) solent (*b.*) asolent		inferre (*Pith.*, *Hus.*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 130—*cont.*				
26. accedenti	accendenti			
conentur		conueniatur	conuentur	
[per]				per *added by Pith.*
execrandas		et grande	et grandes	
consuetudines		consuetudinem		execranda consuetudine et scaeua lege (*Hus.*).
26-27. et scaeuas leges	et istebas	et seuas	et issceuas	
27. innocentioris		innocentiores		
27 28. Romanam gentem	romana gente			
28-29. uniuersum orbem nostrum		uniuersam urbem nostram		
29. de suis maliuolis				de *deleted by Pith.*, inficere (*Cujas*), anguis maliuoli inficere (*Hus.*)
inficere	infigere	infigere	infigere	
et		hec		
30. prudentia tua			prudentiamtuam	
relatione	relationem	relationem		
31. statutis		statutum	statuti	statuis (*Lach.*), statuunt (*Hus.*)
euidentissime sunt	euidentissimorum	euidentissimorum	euidentissimorum	euidentissime sunt (*Mom.*), euidentissimorum (*Hus.*)
exquisita		acquisita	adquisita	
et inuenta	et ad inuenta	et inuenta		inuenta (ac) (*Hus.*)
32. aerumnas	eorum maenas			
illis	illi	illas	illi	illis (*Schult.*)
PAGE 132.				
1. ac	ad			
2. poenae	poena	poena	poena	
ita ut			aut	
3. consentaneos			consentaneus	consectaneos (*Hus.*)
adeo	ad eos	ad eos	ad eos	adeo (*Pith.*), aduersus de (*Hus.*)
4. bona		nomen a		
5. qui	quis	quis	quis	
6. maiores personae	maioris	maioris personam	maioris	maioris (*Hus.*)
[ad]adhuc	adhuc	adhuc	ad hunc	ad adhuc (*Mom.*), ad hanc (*Hus.*)
7. sectam	secutam	secuta	secta	
8. transtulerint	transtulerunt	transtulerunt	transtulerint	
9. facies		facias		
ipsos quoque		ipsi quoque	ipso quoque	ipsosque (*Hus.*)
phaenensibus	forensibus	forensibus	forensibus	phaenensibus (*Pith. and Schult.*). Cf. *Theodoret Hist.* Eccl. 4, 22, *de Christianis Alexandrinis.* Foenensibus (*Hus.*)
Proconnensibus	proconensibus	proconensibus	praeconensibus	proconensibus (*Hus.*)
10. stirpitus	strepitus			
lues	malis	mali	mali	lues (*Mom.*), mala (*Hus.*)
10-11. nequitiae de saeculo		nequissi de hoc saeculo		nequitia de saeculo (*Hus.*)
12. maturet	maturius	maturius	maturius	maturius (*Hus.*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 132 *cont.*				
12. obsecundare dat. prid. k.		obsecundari		o. ne cunctetur (*Hus.*)
13. Alexandriae		*omitted*	*omitted*	
16. sic		(*a.*) *omitted*		
17. salfad	salfade	salphad	salpadae	salfadae (*Hus.*)
moysen	moyses		moyse	
Eleazarum	eleatarum	(*a.*) eleanarum		
17-18. sacerdotem		sacerdotes	sacerdotes	
18. principes	principem			
omnemque	omnemque	atque omnem	atque omnem	atque omnem (*Hus.*)
senatum	senatu			
20. deleatur	deleantur			
21. de medio	de medio	de media	de media tribu	
tribus suae	tribus sua	tribu sua;	sua	
masculus		(*a.*) et ideo non deleatur nomen patris nostri *repeated after* masculus		
22. fratrum		frm̄		
patris	patri			
PAGE 134.				
1. petitionem			petitiones	
coram deo	domino dō		domino deo	coram deo (*Blume*) / domino deo (*Hus.*)
dominus			*omitted*	
Moysi		moysen	moyses	
2. salphad	salpad(a)e	salphad	salpad(a)e	salfadae (*Hus.*)
3. medio	medium			
dices	dicimus		dicis	
4. et		*omitted*		
filium	filius	filium	filius	filios (*Hus.*)
6. proximo	proximum			*After* habuerit *much has fallen out from the text. Hus. supplies* dabitis hereditatem eius filiae eius. Si filiam non habuerit, dabitis fratribus eius. Si fratres non habuerit dabitis patruis eius. Si patruos non habuerit.
7. filiis	filios			
8. secundum quae		sicut		
9–11. Gaius institutionum libro iii legitimas sic ordinat successiones intestatorum	libro iii institutionū kp. dccxviiii gaius institutionū l̄ib̄ iii legitimas sic ordinat successione statutorum	libro iii institutionum kp. cxxiidem gaius institutionum libro iii legitimas sic ordinata successiones intestatorum	libro tertio institutionum kp̄. cxxvi de successione inter fratres gaius	
11. lege				ex lege (*Just. Inst.*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 134 —*cont.*				
12. pertinent		(*b.*) peruenient		
sui	si	si	si	
existimantur		estimantur	extimantur	
13. morientis		morienti		
fuerunt	fuerint		fuerint	fuerint (*some codices of Just. Inst.*)
filiaue	filia uel	filia uel	filiaue uel	
nepos	nepus		nepus	
14. neptisue [ex filio] pronepos	neptisue pronepus	*omitted*	neptisue proneptus	neptisue ex filio pronepos (*Just. Inst.*)
filio		uel filio		ex filio (*Just. Inst.*)
nato			natu	
15. prognatus	prognatos		prognatos	
interest	interesse	interesse	interesse	interest utrum (*Just. I.*)
[sint]	*omitted*	*omitted*	*omitted*	sint (*Just. Inst., Hus.*)
16. adoptiui	adoptibi			
nepos	nepus		nepus	
neptisue			neptimue	
16-17. pronepos	pronepus pronepotesue	pronepotes proneptesuae	pronepus pronepteue	
proneptisue	(*a.*) pronepote suo			
18. [in potestate ... acciderit]	*omitted*	*omitted*	*omitted*	in potestate ... acciderit (*Just. Inst.*)
19. ratione ueluti		rationem ueluti emancipationem		
id	idem	idem	idem	id (*Just. Inst.*)
20. quisque				quis (*Just. Inst., Hus.*)
morietur			moriatur	moreretur (*Just. Inst.*) moritur (*Hus.*)
sit		sint	sint	
nepos	nepus		nepus	
21. non		*omitted*		
idem et	idem ex			item et (*Hus.*)
ceteris	ceterorum : (*index*)	ceteri		
liberorum	librorum (*index*)			
22. intellegimus				intellegemus (*Just. Inst.*)
manu			manum	
22-23. est [ei cuius in manu est] sua heres est	eius estis sua heres est	eius est ualere et	eius est in sua heres est	eius, qui moritur est, ei sua heres est (*Hus.*) est [ei cuius in manu est] sua heres est (*Mom.*)
23. loco		in loco	locus	
23-24. item nurus quae in filii manu est	item nurus qu(a)e in filii manus est	*omitted*	item nurus quae in filii manus est	
24. nam et haec neptis loco est	nec et h(a)ec neptis loco est		nam et haec neptis loco est	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 134 –*cont.*				
25. [si]	*omitted*	*omitted*	*omitted*	si (*Hus.*, *Mom.*)
manu sit cum	manus eius dum	manu eius dum	manu eius cum	m. est cum p. moritur
26. pater moritur	p. moritur	p. moritur (*b.*) morituri	p. morituri	(*Hus.*)
sit idemque dicimus		idem *omitted*	sunt idemque	dicemus *is required* dicemus (*Hus.*)
27. [in]	*omitted*	*omitted*	de	
nepotis manu	nepotes (*index*)	manum		
causa sit quia	causa sit quae a	cause ita	causa sit quae a	
proneptis	pronepotis	proneptis	pronepotis	
28. [qui]	*omitted*	*omitted*	*omitted*	qui (*Just. Inst.*)
29. futuri	futuris	futuris	futuris	
sui		sibi	sibi	
PAGE 136.				
1. nomine	nomina	nomina	nomina	nomine (*Pithou*)
Aelia		helia		
2. ex		*omitted*		
senatus consulto	senatum consultum	senatus consultus	senatus consulto	
2-3. [probatur. ...causa]	*omitted*	*omitted*	*omitted*	probatur causa (*Gaius*)
4. [quod]	*omitted*	*omitted*	*omitted*	quod (*Gaius*), quod etiam (*Hus.*)
et				etiam (*Gaius*)
eo filio		officio		
secundaue	secundaque	secundaque	secundaque	secundaque (*Gaius*)
mancipatione	aemancipationem	emancipatione	mancipatione	mancipatione (*Gaius*)
5. manumittitur	manum mittitur	manum mittitur	manum mittitur	
intellegemus	intellegimus	ille legitimus	intellegimus	
6. [igitur]	*omitted*	*omitted*	*omitted*	igitur (*Gaius*)
filius	filiis		filiis	
nepotes neptesue	nepotesuae	nepote nepteue	nepotesue nepte	nepotes neptesue (*Gaius*)
7. extant	existent	existente	existent	extant (*Gaius*), extent (*Hus.*)
gradu	gradum	gradum	gradum	
propior	propium	proprium	proprio	propior (*Pith.*), proximior (*Gaius*, *Just. Inst.*, *Hus.*)
8. ulteriorem	ulteriore		ulteriore	
aequum	et quam	cum	ecum	aecum (*Gaius*, *Codex Veronese*)
uidetur	uidetur	uidentur	uidetur	uidetur (*Just. Inst.*), uidebatur (*Gaius*, *Codex Veronese*, *Hus.*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 136—*cont.*				
8. neptesue			uenepte	
9. patris sui locum	patri sui loco			
pari	patri			
ratione	rationem	rationem		
10. nepos	nepus		nepus	
neptisue			neptesuae	
ex			et	
et ex	(*a.*) sed ex			
nepote	*omitted*			
pronepos	pronepus			
11. uocantur				omnes uocantur ad hereditatem (*Gaius, Veronese C.; Hus.*)
12. quia		qua	qua	
nepotes	nepotes	nepotes-uae	nepotis	nepote sua
neptesue				
item	idem (*index*)			
proneptesue			pronepotesue	
13. patris	patri		patri	parentis (*Gaius, Just.*)
esse uisum est	*omitted*	esse uisus est	esse uisus est	esse uisum est (*Gaius*)
14. sed			et	
stirpes	stirpem	stirpe	stirpes	stirpes (*Gaius*)
hereditates	hereditatis	hereditatem	hereditatis	hereditates (*Gaius*), hereditatem (*Just. Inst., Hus.*)
diuidi ita	diuidit	diuidi	diuidit	diuidi ita (*Gaius*), diuidi (*Just. Inst.*)
14-15. dimidiam partem			(*a.*) dimidiam (*omitting* partem)	partem dimidiam (*Gaius, Just. Inst., Hus.*)
15. ferat [et]	fruat	fuerat	fuerat	ferat et (*Gaius*)
16. alteram		aliam		
16-26. item si ex *till* matrem eandem habuerint			*omitted*	
16. item	idem (*index*)			
extent	extent	existant et		extent et (*Gaius, Veronese, Hus*), extant et (*Just. Inst.*)
17. [duo]	*omitted*	*omitted*	*omitted*	duo (*Gaius*)
tres	ires			
17-18. [ad unum *till* tres aut quattuor]	*omitted*	*omitted*	*omitted*	ad unam *till* tres aut quattuor (*Gaius*)
19. altera		alteram		
dimidia	dimidiam	dimidiam	dimidiam	
20. De agnatis				de agnatis (*omitted in Gaius*)
21. ex	et	et ex		
lege		legem		
22. legitima		legitimam		
cognatione		cognationem		
iuncti	uincti			

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 136—*cont.*				
23. est	hoc est	hoc est	hoc est	est ea (*Gaius*), haec est (*Hus.*)
per		ex		
uirilis sexus	uirili sexu	uirili sexu	uirilu sexu	
personas	persona	personae		persona (*Gaius, Veronese*)
24. coniungitur		coniunguntur		
[qui]	*omitted*	*omitted*	*omitted*	*omitted in Just. Inst.* III, 2, 1; *who also omits the first* sunt *in the line. In Gaius the passage* (III. 10) *is defective.*
patre	pater			
sunt		sunt *omitted*		
25. sibi	uisi	uisi	uisi	sibi (*Just. Inst.*)
an				an etiam (*Hus.*)
26. matrem	matre eadem	matre eadem	matre eadem	
eandem				
habuerint		habuerunt		
27. item	idem (*index*)			
fratris		patris		
inuicem is	inuice his			
28. eodem		eorum		
fratres			fratris	
patrueles		patruelis	patruelis	
29. quos plerique etiam consobrinos	quos plerique etiam consobrinos		*omitted*	
30. ratione		rationem		
ad		et		
gradus		grados		
agnationis	agnitionis	agnitionis	agnitionis	agnationis (*Gaius*)
31. poterimus	potuerimus		praeterimus	
simul			*omitted*	
32. tum cum	tunc	tunc	tunc	tum cum (*Gaius*), tunc cum (*Hus.*)
33. intestatum	intestato	intestato	intestato	intestatum (*Gaius, Just. Inst.*)
decessisse	decessisset	discessisset	decessisset	
34. iure		iuro		
34-35. hereditatem proximus omiserit	heredes proximos omiserint	heredem proximo suo miserit	heredem proximos omiserit	agnatus proximus hereditaten omiserit (*Gaius, Hus.*)
35. hereditatem				*omitted in Gaius, and* (*Just. Inst.*)
decesserit		et decesserit		
36-37. quis proximus erit, requirimus, sed eo tempore, quo	*omitted*			fuerit *instead of* erit *is required* (*Mom.*) fuerit (*Hus.*)
38. aliquem			alique	
intestatum	in testamentum	in testamentum	in testamentu	
quia	quam	quam	quam	quia (*Gaius*)
facto			factum	

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 136—*cont.*				
39. esse		*omitted*[1]		
uisum est tunc	uisus			u. e. (ex iis qui) tunc (sunt) (*Hus.*)
requiri		requirit		
proximum			proximum est	
40. [eo]	*omitted*		*omitted*	eo (*Gaius*)
heredem fore	heredes forte		heredum forte	fore heredem (*Gaius*)
PAGE 138.				
1. quod	qui	quedam	quid	quod (*Gaius*)
tamen	*omitted*			
adtinet		adtinent		attinet in (*Hus.*)
hoc				in hoc (*Gaius*)
iure		iuro		
2. placet				placuit (*Gaius, Hus.*)
ceterorum				ceterorum bonis (*Gaius. Veronese Codex*)
ab		ad		
3. nam	nam et	nam et	nam et	nam (*Gaius*)
proinde		deinde		proinde ad nos (*Gaius, Hus.*)
atque	adq ;		ad quem	
4-5. nostrae uero hereditates ad feminas ultra consanguineorum	nostrae uero hereditates ad feminas ultra consanguineorum		*omitted*	
5. fratri sororiue		fratris sorori uel	fratris sorori uel	
6. filia heres				filia legitima (*Hus.*) legitima heres (*Gaius*)
7. sororis autem nobis	sorores au nob			
loco		locum		
8. manum		manu		
apud	aput			
ius				iure (*Gaius*)
nancta	cuncta	iuncta	cuncta	nancta (*Gaius, Ver.?*) consecuta (*Hus.*)
10. [ei] qui	quis	quis	quis	ei qui (*Gaius*)
sit	si sit	si sit	si sit	si *or* st (*Gaius, Ver.*)
11. superioribus	uperioribus			
frater		*omitted*		
potior	pocior	potior	portior	prior (*Gaius, Ver. C.*)
quia			qui ad	
gradu		gradum	gradum	
12. facta est	faciat	facta	facta	facta est (*Gaius*)
suos	uos			
13. extet	exstet			
15. numero sint forte nati ex		n. s. f. aati ex		forte numero sint nati ut ex (*Gaius*) ; f. n. s. n. uelut ex (*Hus.*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 138—*cont.*				
15. et		aut		*omitted* (*Gaius*)
aut				uel (*Gaius, Hus.*)
16. stirpes		stirpe		
suos	uos			
17. heredes		heredum		
an	*omitted*			
autem	aū			tamen (*Gaius, Hus.*)
18. diuidendam				diuidendam esse
quotquot	quodquod		quod erunt	(*Gaius, Hus.*)
erunt	dederunt			
19-20. hereditas diuidetur et singuli singulas portiones ferunt	*omitted* / fuerunt	hereditas diuiditur et singuli singulas portiones / fecerunt		hereditas diuidetur ita ut singuli singulas portiones ferant (*Gaius, Hus.*)
21. uocat		uocant		uocant (*Gaius Veron.*)
sint	(*a.*) sunt			
22. gentiles		gentilis		
commentario retulimus et	comentariorum et ultimum est	commentario respondit et ultimum est	commentario et ultimum est	commentario retulimus et (*Gaius*)
23. admonuerimus	admouerimus		admoueremus	
gentilicium				totum gentilicium
desuetudinem			de suae consuetudine	(*Gaius, Hus.*)
abisse			habuisse	abiisse (*Hus.*)
24. ea				eadem (*Gaius*)
tractare		intractare		
25. Paulus libro sententiarum iiii sub titulo	paulus liber sententiarum vii (vii sententiarum *index*) sub titulo	*omitted*	*omitted*	
25-26. de intestatorum successionibus	de testamentorum successionibus	de intestatorum successionibus	de intestorum successionibus	
27. dicuntur				[et hi] dicuntur (*Hus.*
testamentum facere non possunt		testamento		f. n. possent (*Hus.*)
27-28. [uel iure non fecerunt cum possent]	*omitted*		*omitted*	*added by Mom.*
28. decederent		dicere	dicerent	
PAGE 140.				
1. quorum	hii quorum	hic eorum	hic quorum	hi quorum (*Hus.*)
quibusue	cuius nec	cuiusue	cuius uel	quibusue (*Mom.*); heredisue(*Hus.*) *who adds* [quiue capite minuti fuerint]
2. nisi	sine	sine	sine	sane(*Cujas*) nisi(*Hus.*);
[non iure]	*omitted*	*omitted*	*omitted*	[non iure] *added by Mom.*
factum				facto (*Hus.*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 140—*cont.*				
2. testamentum				testamento (*Hus.*)
3. obiecta	abiecta	abiecta	abiecta	
exceptione	expectatione	expectationem	expectatione	
optinebit				obtinebitur (*Hus.*)
3-4. horum quorum testamenta rumpuntur	eorum qu. t. r.	eorum qu. t. rumponuntur	eorum qu. t. rumponuntur	h. qu. (*Mom.*), ii quorum tes. (a postumo) r. (*Hus.*)
4. inrita	inuita	inuita	inuita	(ut inpia) inrita (*Hus.*)
ipso				ipsi. (*Hus.*). (*He had also conjectured in Zeitschrift für Gesch. R.W. xiii.* p. 46, initio)
quidem		quoque		
testati	testamenti			testamenti (*Hus.*)
5. sed per consequentias *till* decedunt	*omitted*		sed per consequentia . . . . decedunt	
decedunt				redduntur (*Hus.*)
7. heredibus	hereditatibus			
deinde				deinde (consanguineis) et (*Hus.*)
et		est	est et	*Mom. thinks* et *should be deleted*
quoque		enim		
gentilibus	gentibus	gentibus	gentibus	
8. consanguinei	consanguineis	consanguineis	consanguineis	consanguinei quos (*Cujas*); consanguineos (*Hus.*)
quos				
adprehenderat		adprehenderet		(aperte) adp. (*Hus.*)
9. interpretatione	interpretationem	interpretationem		(at) interp. (*Hus.*)
locum	loco			
10. acceperunt		accoeperint		
sui		sibi	suis	
primo	hoc primo	hoc primum	hoc primo	hi primo (*Hus.*)
potestate		potestatem	potestatem	
11. si				*correctly deleted by the editors* (*Mom.*)
an			tam	
et		eos	eos	sed (*Hus.*)
12. Iuliam	iulia			
Papiamue	pipiamuae	papianum ex-	papiam uel	papiam que (*Hus.*)
quaesiti	quesiti	quisiti	quesiti	
13. potestate		potestatem		
heredes			heredem	
heredes			heredem	
14. et		ex	ex	
15. possessio nisi	possessionis	possessiones	possessionis	possessio nisi (*Vangerow*
16. erat necessaria	necessariam			erit nec. (*Hus.*)
suis	sui		sui	
a morte	ad mortem	a mortem		

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 140—*cont.*				
17. hereditariarum continuatur	hereditariorum	hereditariorum (?)	hereditariorum *after* continuatur *the word* idem (*beginning a chapter*	
nec			ne	
18. pupillis furiosis	pupillo		pupillum	furioso (*Hus.*)
curator necessarius nisi	curatur		(*a.*) necessariis	nec si (*Hus.*)
18-19. [ut abstineant, si minus forte]	*omitted*	*omitted*	*omitted*	ut abstineant si m. for (*Krueger*), (*Hus omits*)
19. soluendo sit	soluenda	uoluenda	soluenda	(non) sit (*Pith., Hus.*)
19-20. etiam furiosus		(*a.*) furiosius		et furiosus (*Hus.*)
20. resipuerit pupillus adoleuerit possint	resipierit	adheleuerit	resipierit in pupillum possit	
21. patris	patri		patri	
PAGE 142.				
1. secundoue manumissus cuiusue		manum missus	secundum uel manum missus cuius uel	
2. [est] fuerint	*omitted*	*omitted* fuerit	*omitted* fuerit	*added by Krueger*
3. ad		ab		
4. ueniunt proneptes ac	ueniant neptes proneptes hac	ueniant *omitted* aut	ueniant	
5. masculino sexu per nullo parentum	sexum post nullum	post nullo	masculinu sexum post nullo parentium	per (*Rittershusius*)
6. inpedimento potestate familia remanserint	famili remanserit	potestatem familia permanere	inpedimentum familia remanserit	*might be deleted* (*Mom*
7. fuerint	fuerunt	fuerit	fuerint	fuerunt (*Hus.*)
8. ordine successionis obsistunt filii si	ordinem filius	ordinem successionem constituunt filius	successiones obstituunt filius	filius (*Hus.*)
9. in familia retinentur ad intestati patris	infamia ab intestato		patri	retinetur (*Hus.*)
10. filiis uocantur		uocatur	filius uocatur	uocatur (*Hus.*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 142—*cont.*				
10. quibus	in quibus			
partem	parentem	parentes	parentes	
11. in stirpes non	in styrpes non		*omitted*	
diuiditur	diuiduntur		diuiduntur	
ita			item (*beginning of a new chapter*)	
unus	*omitted*			
et	ex	ex	ex	
12. semisses			semisse	
idemque	idque	idque	idque	idemque (*Pith.*)
13. auo	ab eo	ab eo	ab eo	auo *editors*
inpari	in patrum	in patrum	in patrum	impari (*Hus.*)
successerint		successerunt		
14. heredes			heredem	
aui	auiae			
materni		materna		
potestate		potestatem	potestatem	
15. ratione	rationem	rationes		
16. heres			heredes	
constituendus	constituendos			
quo		quod		
17. decessisse	decessisset			secundum quod ex
euentu			euentum	euentu (*Hus.*)
17 18. et ortu	et hortum nep.	et certum nep.	et ortum nep.	nepos is (*Hus.*)
nepotis				
18. auo				auo conceptus (*Hus.*)
18-19. [conceptus				*Added by Mom.* (*cf. Inst.* III., 1. 8)
.....aui]				
19. finiri	iniri	siniri	siniri	est suus fieri (*Hus.*)
quem	cum	cuius	idem cum (*beginning a new chapter*)	
emancipatus	et mancipatus	et emancipatum		
20. adoptauit		adoptiui		
sui			suis	
heredis		heredes	heredes	
successione		successionem		
21. [potest]				*added by Mom.*
adoptiuus			adoptiuum	
21-22. nec quasi	ne quasi	ne quasi	neque si	ne quasi (*Hus.*)
22. possessionem	possessionum	possessionum	possessionum	
petere	potire			
potest si		potens		
23. agnatos		agnatum		
pertinebit			pertineri	
			Here the Vercelli Codex ends.	
25. cognati	cognatis			
uirilis		uirili		
[sexum]	*omitted*	*omitted*		descendentes sexum (*Hus.*)

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 144—*cont.*				
1. [quod]	*omitted*	*omitted*		quod (*Paul.*)
etiam	enim etiam	etiam		etiam (*Paul.*)
2. cognatos	agnatos	agnatos		
3. agnatus				et agnatus (*Paul.*, *Hus*
auunculus	abunculus			
4. tantum modo	tantum modum	t. modo		
est				*omitted in Paulus*
patre	patrem			
5. qui in potestate fuerunt		quibus in potestate fuerint		
7. patris	patri			
causam	causa	causa		
probauerunt		probueraint		
8. consanguinitatis		sanguinitatis		
9. agnatis defertur		agentis differtur		
10. gradu	gradum	gradum		
11, eodem gradu	eodem gradum	eosdem grados		
11-12. si sint defuncti fratris et filius et nepos	si sit frater defuncti et fratris filius et nepus	si sit frater defuncti et fratris filius et nepos		si sint fratres defun et fratres filii nepotes. *Paul.*, *cording to Kürge emendation.* si si fratre defuncto, fratris filius, et nep eius ex (*Hus.*)
12. fratre	fratres et			
existente	existentes	existentem		
13. praefertur	perfertur			
14. numero		numerum		
15. uiritim	uirium	iuri		
distribuatur		distribuitur		
16. consanguineorum	consanguineas	consanguineos		consanguineorum (*Hu*
admittuntur	admittantur	amittantur		
id quod	id quod	hi quod		idque (*Paul.*, *Hus.*)
17. Voconiana ratione	uoconia rationem	coniurationem		uoconia narratione (*Pau*
18. sine ulla				nulla (*Paul.*) ; sine i (*Hus.*)
discretione sexus admittit	discreptationes ex his cognatos admittit	disceptationem sexus cognatis admittit		discretione sexus (*Pau* *Mom. deletes* cognat discretione (femini sexus agnatos admi (*Hus.*)
19. Ulpianus libro singulari regularum] sub titulo	ulpianus libro singulari sub titulo	*omitted*		Ulp. lib. regularum s gulari s. t. (*Hus.*
20. hereditatibus				heredibus (*Ulp.*)
21. ingenuorum	gentiliciorum	gentiliciorum	gentiliciorum	ingenuorum (*Ulp.*, *Hu* gentiliciorum (*Mom.*

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 144 -*cont.*				
23. liberorum	liberorum	in liberorum		in liberorum (*Codex of Ulp.*)
non sunt	non sint	non sint		non sunt (*Ulp.*), non sint (*Hus.*)
24. et		aut		
patre	patrem			
sunt				sint (*Hus.*)
25. [proximos id est cognatos] uirilis	*omitted*	*omitted* uirili		proximos id est cognatos (*Blume from Ulp.*)
26. mares	matres	matres		
eiusdem	eisdem			
id	his			
lege	legem			
27. intestatus				intestato (*Ulp.*)
cui suus	cuius	cuius		cui suus (*Ulp.*)
28. escit	est	est		
familiam	familia			familiae (*Ulp.*)
habeto	habeatur	habeatur		habeto (*Ulp.*)
29. eadem	eamdem	eamdem		
PAGE 146.				
1. uocat	uocant	uocantur		
si agnatus	signatus	sic natus		si agnatus (*Pith.*)
nec escit	nescit	nescit		nec, *with a blank space* (*Ulp. Codex*)
familiam		familias		
2. [habento nunc nec ullus est] heres	*omitted*	*omitted*		*Added by Mom.* habento nunc (nec gentiles) (*Hus*). *omitted by Hus.*
hinc	hanc	hanc		
3. usu sunt		usui est		
5. idem [libro] institutionum.....[sub titulo de successionibus] ab intestato	item (idem *index*) ab intestatio institutionum	idem ab intestato institutionum		idem libro inst. (secundo s. t. d. s.) ab intestato (*Hus.*)
6. ab		ad		
defertur		differtur		
8. fuerunt		fuerint		
[qui sunt]	*omitted*			*Added by Mom.*
9. quia	qui	qui		quia (*Mom.*)
nati sunt				natus sit (*Hus.*)
succedunt		succesdunt		
10. idem	item			
libro	liber (*index*)			

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 146 *cont.*				
11. post suos	post suos (*text*) postumos (*index*)	post tuos[1] post duos[2]		
intestato	intestos (*index*)			
legitimi	legitim(a)e	legitim(a)e		
primum		primi		
12. [consan- guinei]	*omitted*	*omitted*		*added by Lenel Palin gen.* Ulp. fr. 1926
12. frater et so- ror	fratres et soror			fratres et sorores (*Hus*
eiusdem	eisdem			
13. potestate	potestatem	potestatem		
patris	patres			
fuerunt		fuerint		
14. [et]	*omitted*	*omitted*		*Added by Mom.*
15. manum	manu			
16. idem	item			
libro		liber		
17. de[ficienti- bus] consan- guineis	deconsan- guineis (*index*) et consan- guineis (*text*)	et consanguinei		deficientibus consa guineis *Mom. on th authority of Ulpia Dig.* xxxvii., 2, 2 p post consanguine admittuntur agnati, consanguinei non sun merito: nam si su consanguinei, licet nc adierint hereditate legitimis non defertu *Hus. has* post consa guineos
18. nos		non		
uirilis	uiris	uirili		
19. consangui- neas	(*a.*) consangui- neis			
20. praetor		praeter		
solet		*omitted*		
emancipatos	et mancipatus			
21. ciuitate	ciuitatem	ciuitatem		
donatos	donatus	donatus		
possessione	possessiones	possessiones		
		Here ends the Vienna Codex.		
ita tamen	hi tamen			sic tamen (*Hus.*)
22. si	sit			
23. conferant	conferat			
24. quod	qui			quod (*Boecking*)
praecipua	precipuam			
bona	bonam			

Line and Word.	Berlin.	Vienna.	Vercelli.	Other Readings.
PAGE 146—*cont.*				
25. ablaturi suis heredibus	ablaturis suis hoc redibus			
26. idem libro [sub titulo] de suis	item liber (*index*) *omitted*			d. s. (et legitimis) (*Hus.*)
PAGE 148.				
2. patrono	patronum			
3. patronaeue lege defertur	patronauae legem refertur			
6. item liberos	idem liber (*index*)			
7. cognatos	cognatus			
8. liber [nec] remancipatione	libero *omitted* remacipationem			*added by Mom.* (mancipatione citra remancipationem) (*Hus.*)
9. manumissori legitimam	manumissoris legitima			
11. auum	auium			
12. nepotem occasione	nepote occansionem			
15. inmunitatem	inmunitate			

LISTS OF THE TITLES, THE SUPERSCRIPTIONS AND SUBSCRIPTIONS, AND OF THE CHAPTERS.

TITLES.

In Pithou's Edition.	*In Scaliger's Apograph. (from Blume's Edition.)*
I. De sicariis et homicidis casu uel uoluntate.	I. De sicariis.
II. De atroci iniuria.	II. De atroci iniuria.
III. De iure et saeuitia dominorum cohibenda.	III. De iure et saeuita dominorum cohibenda.
IIII De adulteris.	IIII. De adulteriis, stupratoribus, et incestis.
V De stupratoribus.	
VI De incestis.	
VII. De furibus et poena eorum.	V. De furibus et poena eorum.
VIII. De falso testimonio.	VI. De falso testimonio.
VIIII. De familiari testimonio non admittendo.	
X. De deposito.	VII. De deposito.
XI. De abigeis.	VIII. De abigeis.
XII. De incendiariis.	VIIII. De incendiariis.
XIII. De termino moto.	X. De termino moto.
XIV. De plagiariis.	XI. De plagiariis.
XV. De mathematicis, maleficis et Manichaeis.	XII. De mathematicis, maleficis et Manicheis.
XVI. De legitima successione.	XIII. De legitima successione.

SUPERSCRIPTIONS AND SUBSCRIPTIONS OF TITLES IN THE MSS.

BERLIN.	VIENNA.	VERCELLI
Incipit capitul legis dei, *followed by index of the chapters and Julian with the additions.*	Incipit legem dei quod precoepit dominus ad moysen, *followed by index of the chapters.*	Incipit capitula legis quod pr cepit deus ad mosen, *followe by index of the chapters, an Julian with the additions*
Incipit lex dei quam deus precepit ad moysen. *Then follows the text without subscription to the book.*	Explicit kap. Incipit liber primus. *Then follows the text ending* xvi. 7, 2, *with the words* bonorum possessiones explicit; *also the 4th title has the prescription* constitut. iiii. de legem moysi.	Incipit legem dei quod prec pit dominus ad moysen. *Then follows the text endi* xvi. 3, 13, *with the wor* heredibus pertineri. *There is no subscription the book.*
Title I., 4, *at the end:*		
item (idem, *index*) de causalibus homicidis.*	item de causalibus homicidiis.*	item de causalibus homicidis
Title I. 5, *end:*		
Explic. titulus de sicariis et homicidis casu uel uoluntate.	explic. de sicariis.	explic. titulo de sicariis et hon cidiis.
Incip. de atroci inturia (*sic*).	incip. de atrociniis iniuriis.	*omitted.*
Title II. *end:*		
Explicit de atrociis iniuriarum kp. III. cons. (*in black and then in red,* kp. dcxvi.)	explicit de atrociis iniuriarum.	*omitted.*
Incipit de iure et sebitia (sed uitia, *index*) dominorum.	incipit de iure et seuitia dominorum constit. tituli III.	incipit de iure et saeuitia don norum.
Title III. *end:*		
Expl. titulo de dominorum seuitia cohibenda cons. III.	expl. de dominorum seuitia.	expl. titulo de dominorum uitia.
Incip. de adulterio.	incip. de adulteriis constitut III. de legem moysi.	incip. de adulteriis.

* *This is the prescription to Chapter 5.*

BERLIN.	VIENNA.	VERCELLI.
Title IV. *end:*		
Expl. titulo quinto.	explicit de adulteris.	expl. cap. quod supra.
Incip. de stupratoribus.	incip. de stupratoribus.	incip. de strupatribus.
Title V *end:*		
Expl. titulo de stupratoribus.	expl. de stupratoribus.	*omitted.*
Incip. de incestis (ingestas, *index*) nuptiis.	incip. de incestis nuptiis.	incip. de incestis nuptiis.
Title VI. *end:*		
Expl. titulo de adulteris stupratoribus et incestis.	*omitted.*	*omitted.*
Incip. de furibus et de poena eorum.	incip. de furibus et de penis eorum.	incip. de furibus et de paene eorum.
Title VII. *end:*		
Expl. titulus de furibus.	expl. de furibus.	*omitted.*
Incipit de falso testimonio.	incipit de falso testimonio.	item de falso testimonio.
Title VIII. *end;*		
VIII.	*omitted.*	*omitted.*
Title IX. *end:*		
Expl. titulus de familiariis testimonium non admittendo decimo.	explicit de falso testimonio.	expl. titulo de testimonia.
Incipit de deposito.	incipit de deposito.	incipit de deposito [x de deposito Codex Bellovacensis.]
Title X. *end:*		
Expl. titulo de deposito unde.	explicit de depositis.	*omitted.*
Incipit de abegeatoribus (abbatoribus, *index*).	incipit de abactoribus.	incipit de actoribus.
Title XI. *end:*		
Expl. de abigeis de incendiariis XII.	expl. de abactoribus.	*omitted.*
(Incipit de incendiari, *index*)	incipit de incendiariis.	incipit de incendiariis duodecim
Title XII. *end:*		
Expl. titulo de incendiariis.	expl. de incendiis.	*omitted.*
Incip. de terminia mota XIII. (mota *omitted in index*).	incipit de termino amoto.	item de termino amoto.

BERLIN.	VIENNA.	VERCELLI.
Title XIII. *end:*		
Expl. titulus de terminea mota.	explicit de termino amoto.	*omitted.*
Incip. de plagiariis XIII.	incipit de plagiariis.	item de plagiariis.
Title XIV. *end:*		
Expl. titul.	explicit de plagiariis.	*omitted.*
Incip. XIV. de mathematicis et manicheis.	incip. de mathematicis.	de mathematicis et manicheis
Title XV. *end:*		
Expl. titulus de mathematicis maleficis et manicheis.	explicit de mathematicis.	*omitted.*
Incip. titulus XVI de legitima successione.	incip. de legitimas actiones.	item de legitima actione.
Title XVI.:		
No subscription.		

LISTS OF CHAPTERS IN THE CODICES.

BERLIN CODEX.	VIENNA CODEX.	VERCELLI CODEX.
(Fol. 17, line 11.)	(Fol. 162*b*, col. 2, at the end.)	(Fol. 6*b*, col. 2, line 22.)
		(Kp̄. DXCII. Idē de episcopis et monachis. Explicit.)
Incipit Capitulū Legis Dī.	Incipit Legem Di Quod Precoepit Dns ad Moysen. (Fol. 163*a*, col. 1.)	Incipit Capitula Legis Quod Precepit Ds̄ ad Moysen. Moyses Di Sacerdus Hec Dicit.
Kp̄. DXCIII. Paulus quoque libro quinto sententiarum.	I. Moyses sacerdos dicit.	Kp̄. I. Si quis pcusserit homi nē ferro.
Kp̄. DXCIIII. Ulpianus libro septimo de officio ꝓconsuli.	II. Ad legem corneliam de sicariis et beneficiis dicit.	Kp̄. II. Paulus quoque Lībr V. sententiarū sub tit ad le- (Fol. 7*a*, col. 1.)
Kp̄. DXCV. Relatis uerbis legis modo ipse loquitur.	III. Ulpianus liber VII. de officio proconsulis sub titulis de sicariis et beneficis.	gem corneliā, Kp̄. III. De officio proconsulis, Kp̄. IIII.
	IIII. Relatis uerbis legis modo ipse loquitur.	Quicūq, cū telo ambulauerit.
Kp̄. DXCVI. Idem paulus libro quod supra et tituiu dicit.	V. Itē paulus libro quo supra, et titulo dicit.	Kp̄. V. Idē paulus libro quod supra et titulo. Kp̄. VI.
Kp̄. DXCVII. Idem de causalibus homicidis.		
Kp̄. DXCVIII. ulpianus libro et titulo	VI. Ulpianus līb et titulo qui supra.	Ulpianus libro et titulo qui supra. Kp̄. VII. Verba rescripti qui hominē occidit. Absolui solet. Kp̄. VIII. Paulus līb tertio quinto tit quod supra.
Kp̄. DXCVIIII. uerba rescripti, et qui hominé cǣ.	VII. Verba rescriptis.	
Kp̄. DC. paulus libro tertio quinto titulo quǣ sup̄.	VIII. Paulus liber tertius titulū qui supra.	
Kp̄. DCI. Idem gregorianus libros quarto ad lege cor.	VIIII. Item gregorianus liber IIII. Ad legē corneliā de sicariis et beneficiis.	
Kp̄. DCII. Idem gregorianus eodem et titulo et libro talem constitutionem ponit.	X. Item gregorianus in codē titul.	Kp̄. IX. Idem. Kp̄. X. Idē gregorianus eodem līb et titulo.
Kp̄. DCIII. Idem gregorianus eodem libro et titulo	XI. Itē gregorianus in eodē līb. titul.	Kp̄. XI. Idem, Kp̄. XII. Idem.
Kp̄. DCIIII. Ulpianus libro et titulo quod supra.	XII. Ulpianus liber et titulus qui supra.	
Kp̄. DCV. Uerba consultationis et rescripti ita se habentem inter clodium optimę imp.	XIII. Verba consultationis et rescripti.	Kp̄. XIII. Imp. euaristus cognoui quod claudius luppi filius in conuinio Kp̄. XIIII.

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Kp. DCVI. Uerba rescripti poenā mari ębaristi	XIIII. De scientibus et ignorantibus generaliter loquitur.	Verba rescripti Kp. XV. D scientibus et (sic) ignorantib generaliter loquitur.
Kp. DCVII. Modestinus libro differentiarum sexto sub titulo.	XV. Paulus libro et titulo qui supra. Explicit de sicariis et Homicidiis Causa. Vel uoluntatem. Incipit De Atrociis In Inioriis (sic.) (col. 2.)	Kp. XVI. Idē, Kp. XVII. Incipit.
Kp. DCVIII. Paulus libro et titulo quod supra.		
Kp. DCVIIII. Moyses dicit si autem duo.	XVI. Moyses dicit.	De iniuriis Moyses dicit
Kp. DCX. Ulpianus libro regulari sub titulo de iuriis.	XVII. Ulpianus libro singulari sub titulo.	Kp. XVIII. Idem de iniuriis.
Kp. DCXI. Papianus libro definitiorum.	XVIII. Papinianus libro definiorū secundo sub titulo.	Kp. XVIIII. De iudicatis psonis p homin liberorū, Kp. XX.
Kp. DCXII. Ulpianus libro xviiii. ad edictum.	XVIIII. Ulpianus libro XVIIII. Ad edictum sub titulo.	Si fateuitur iniuriam Kp. XXI.
Kp. DCXIII. Paulus libro singulari et titulo.	XX. Paulus libro singulari sub titulari.	Idē de iniuriis, Kp. XXII.
Kp. DCXIIII. Idem paulus eodem libro singulari sub titulo quemadmodū iniuriā.	XXI. Idem paulus in eodem libro singulari sub titulo quem admodum iniuria agatur.	
Kp. DCXV Paulo libro sententiarum sub titulo.	XXII. Paulus libro sententiarū sub titulo. Explicit Capitula Incipit De Torae et seuitia DominoR.	Idem Kp. XXIII. sicariis e beneficiis Kp. XXIIII. Incipit. (col. 2.) De iure et seuitia dominor.
Kp. DCXVI. Incipit de iure et seduitia dominoR moyses dicit :	XXIII. Moyses dicit.	Moyses dicit Kp. XXV. Idē.
Kp. DCXVII. Paulus libro sententiarū sub titulo.	XXIIII. Paulus' libro sententiarum sub titulo.	
Kp. DCXVIII. Ulpianus libro vm de $\overline{\text{off}}$. proconsu$\dagger$.	XXV. Ulpianus liber VIII. de officio proconsulis sub titl$\bar{\text{i}}$.	Kp. XXVI. De dominor, seuitia.
Kp. DCXVIIII. Hec sunt dominoR quidem potest.		
Kp. DCXX. Diuis etiam adrianus.	XXVI. Diuus etiam adrianus.	Kp. XXVII. Idē Kp. XXVIII. De.

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Kp̄. DCXXIIII. Paulus libro singulari de ulteris.	XXX. Paulus libro singulariū sub titulo.	
Kp̄. DCXXV. Marcellu' libro xxxi. degestorum scribe auctoritate.	XXXI. Marcellus libro XXXI. digestorū.	Kp̄. XXXIII. Marcellus līb XXXI. degestor, de auctoritate Kp̄. XXXIIII. Idem
Kp̄. DCXXVI. Idem Paulus eodem singulari libro.	XXXII. Idem paulus eodem singularē librū et titūl.	Kp̄. XXXV. Qui iure matris uel patris qui accusat potest.
Kp̄. DCXXVII. Idem Paulus eodem singulari et titulo.	XXXIII. Idem paulus in eodem libro et titulo.	Kp̄. XXXVI. De adulteriis.
Kp̄. DCXXVIII. Papianus libro quinto decimo responsorū sub titulo.	XXXIIII. Papinianus libro et titulo. (fol. 163*b*, col. 1.)	XXXVII. Paulus līb singulari et tīt quod supra.
Kp̄. DCXXVIIII. Paulus libro singulari et titulo.	XXXVII. (Sic) Idem.	Kp̄. XXXVIII. Idē Kp̄. XXXVIIII. Idem Kp̄. XL., Idem si pater qui adulterū occidit et filię.
Kp̄. DCXXX. Papianus libro singulari adulteris.	XXXVIII. (Sic) Idem.	Suę pepercit. Kp̄. XLI. Si maritus uxorē sua in adulteriū deprehensā occid.
Kp̄. DCXXXI. Papianus eodem singulari et titulo cum patri	XXXVIIII. Sic de mancipiis alterutrius.	Kp̄. XLII. Si de mancipiis alterius marito uel patre accus.
Kp̄. DCXXXII. Idem si pater qui adulterium occida et filię	XL. Paulus libro sententiarū sub titulo.	Kp̄. XLIII. De adulteriis Expl.
Kp̄. DCXXXIII. Papianus idem si maritus uxorem suā in aď.	Explicit De Adulteris. Incipit De Stupratorib;	Kp̄. XLIIII. Incipit de strupatoribus moyses dicit qui manserit cū masculum. (fol. 7*b*, col. 1.)
Kp̄. DCXXXIIII. Idem si de mancipiis alterius maritu.	XL. (sic) Moyses dicit thui manserit cū masculo.	
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Kp̄. DCXXXVIII. Idem Theodocianus imperatur Ualentianus.	XLII. Idem.	Kp̄. XLVII. Idem theodosianus imp̄. valen tinianus theodosius et archadius āāā.
Kp̄. DCXXXVIIII. ac iuc. nobis laudanda igitur experiem.	XLIII. Oms qui in flagitionib. luxus uirili corpus. Incipit De Incestis Nuptiis.	Kp̄. XLVII. (sic) Idem.
Kp̄. DCXL. Incipit de ingestus nuptiis Moyses dicit.	XLIIII. Moyses dicit quicūq; concubuerit cum mulierem uxorem patris.	Kp̄. XLVIII. Incipit de incertis nuptiis moyse dicit.
Kp̄. DCXLI. Ulpianus libro regulari de nuptiis sub tit.	XLV. Ulpianus liber singularis nuptiis sub titl.	Kp̄. XLVIIII. De nuptiis tit.
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Kp̄. DCXLIIII. Exemplum edicti dioclisiani.	XLVIII. Si quis contra romani nominis decus sanctitatem.	Kp̄. LII. Si qua aut contra roma.
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Kp̄. DCXLVI. Hanc quoque constitutionē gregoriani.	XLVIIII. De nuptiis.	Kp̄. LIII. Idē Kp̄. LIIII. de adulteris.
Kp̄. DCXLVII. Papianus libro singulari de adulterii.	L. De adulteris.	Kp̄. LV. De his qui incertas nuptias con traxerunt.
Kp̄. DCXLVIII. Idem dicitur in eos qui incestas nupt.	LI. Idem de nuptiis. Explioit De Stupratoribus.	Kp̄. LVI. Maledictus inquid dixit Moyse qui concubuerit cū uxorē patri
Kp̄. DCXLVIIII. Maledictus inquid dixerit Moyses.	Incipit De Furibus Et De Poenis Eorum.	Kp̄. LVII. Incipit de furibu et de poene eor.
Kp̄. DCL. Incipit de furibꝫ et poena eorū.	LII. Quodsi duodecē tabularū.	Kp̄. LVIII. Idem Kp̄. LVIIII. Idem.
Kp̄. DCLI. Paulus liber sententiarum quinto.	LIII. Paulus liber sententiarū V.	Kp̄. LX. Idem Kp̄. LXI. Idem Kp̄. LXI (sic).
Kp̄. DCLII. Ulpianus libro octauo ad edictum.		
Kp̄. DCLIII. Nunc hec lex non sit in usu et siquis.		

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ɔ. DCLV. Idem et in balneariis furibus sed si se telo.	LV. Si quis noctu furem occiderit.	
ɔ. DCLVI. Paulus libro sententiarum ii.	LVI. De furibus. (Col. 2.) LVII.	Kp̄. LXIII.
ɔ. DCLVII. Si steterit testes iniustus aduersus hom.	Idem. Explicit. Incipit. De Falso Testimonio. LVIII. Moyses dicit.	Idem K (sic). LXIIII. Incipit de falso testimonio moyses dicit.
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p̄. DCLXI. Idem liber ad lege Cornelia de sicariis et benē.	LXXII. Paulus liber sententiarum V. sub titulo ad legem corneliam.	Kp̄. LXVII. Idē Kp̄. LXVIII. Idē Kp̄. LXVIII. Idē.
p̄. DCLXII. Paulus liber sententiarum quinto sub tit. a lege Corn.	LXXIII. Idem.	
p̄. DCLXIII. Idem eodem libro et titulo falsus		(Col. 2.)
p̄. DCLXIIII. Ulpianus sub titulo de poena legis Corne.	LXXIIII. Idem poena legis cornelie testamentariae liber VIII.	Kp̄. LXX. Idem Kp̄. LXXI. Idem X.
p̄. DCLXIIIII. Idem quod falsas testationes faciendas.	LXXIII. (Sic) Idem.	
p̄. DCLXVI. Idem si q. cohierit ab occisione.	LXXIII. (Sic) Idem. LXXVIII. (Sic) Idem.	Kp̄. LXXII. Idem Kp̄. LXXIIII. Idem Kp̄ LXXV.
p̄. DCLXVII. Ulpianus libro nono. de off. ꝓco	LXXVIIII. De officio proconsulis ad legem corneliam.	De officio ꝓconsolis ad legem.
p̄. DCLXVIII. Paulus sententiarum sub titulo de tes.	LXXII. (Sic) De testibus et de questionibus. Explicit. Incipit. De Deposito.	iuliam Kp̄. LXXVI. De testib et questionibus eorū 7 expl. Kp̄. LXXVII. Incipit deposito (sic).
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Kp̄. DCLXXVIII. Paulus liber responsorum v. sub tit.	LXXXIIIII. (Sic) Paulus liber responsorum V. sub titulo.	Kp̄. LXXXVI. Ex locato et conducto.
Kp̄. DCLXXVIIII. Paulus ℞ satis.	LXXX. (Sic) Si quis expositus rebus inlesis. LXXXI. Satis propositā constitutionem. (fol. 164*a*, col. 1). Explicit. Incipit de abactoribus. LXXXII. Si quis imbolauerit ꝓitulum aut ouem.	Kp̄. LXXXVII. Idem. Kp̄ LXXXVIII. De satis ꝓ posita constitutione Kp̄. LXXXVIIII. Incipit de abactoribus moyses d Kp̄. XC. Idē; Kp̄. XCI. Idē; XCII.
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Kp. DCLXXIIII. Idem Paulus eodem libro et cett.	LXXXVII. Qui bouem uel equum errantem inuenerit.	
Kp. DCLXXV. Paulus liber singulare de poenis pagaconorum.	LXXXVIII. De poenis paganorum.	Idem de penis paganorum.
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Kp. DCLXXVIII. Idem ulpianus liber et it qui supra.	XCIIII. (3) Eodem scripto.	
	XCII (sic). Idem ulpianus libro et titulo.	
Kp. DCLXXVIIII. Incipit de incendiarii XII. moyses dicit.	XCII. Si quis bouem aberrantem uel equum. Explicit. Incipit. De Incendiariis.	Kp. XCVIIII., Idem; Kp. C., Incipit de in- cendiariis moyses dicit
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Kp. DCXCI. Idem Paulus eodem libro et titulo.	XCIII. Moyses dixit si exierit ignis et inuenerit spinas et combusserit.	
Kp. DCXCII. Idem Paulus libro et titulo.	XCIIII. Paulus liber sententiarū sub titulo.	Kp. CI Idem.
Kp. DCXCIII. Ulpianus liber de officio et consulis	XCV. Commissum uero seruorum.	Kp. CII. Idem.
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Kp. DCXCVI. Idemque est et si arbustum.	C. Idem. Idem.	Kp. CVII. Si quis insulā uoluerit exurere.
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* Note the errors in numbering in the Berlin Codex.

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Kp̄. DCXCVIIII. Idem libro VI. ex uiuiano.	Explicit De Incendiariis.	Kp̄. CX. Idem.
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Kp̄. DCCV. Diuus adrianus Terentio Gentiano.		
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Kp̄. DCCVII. Paulus liber sententiarum V.	CVIII. Paulus librō sententiarum v.	Kp̄. CXV. Idem.
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Kp̄. DCCVIIII. Si seruus sciente dominū alienū seruus.		
Kp̄. DCCX. Ulpianus libro nono sub tit. de officio.	CXIIII. (sic.) sub titulo ad legem fabiam tenetur.	
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Kp̄. DCCXXIII. Idem pro nepotes proneptesue.	CXXVIII. (sic) Item pronepotes proneptesue.	
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SOURCES OF THE COLLATIO.

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(*This passage in the Collatio differs considerably from the version in the Vulgate.*)

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C.

[*A passage from the Collatio* (v. 3) *is found in mutilated form in the Theodosian Code* (ix. 7, 6).]

D.

Passages from the Collatio repeated in Justinian's works.

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* *Indicates Names of Authors who have Edited the whole Collatio.*

† *Indicates Names of Authors who have discussed complete parts of the Collatio.*

[ ] *Indicates Names of Authors who have discussed passages of the Collatio, that are also found in* GAIUS, ULPIAN *or* PAULUS.

Those whose Names are not marked have elucidated or emendated passages in the Collatio.

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